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## Beyond the EU's Block exemption

*By Mario MONTI, Commissioner of the European Commission responsible for Competition*

### speech delivered at Forum Europe Conference: "Who will be in the driver's seat?"

*on 11 May 2000, Brussels*

## INTRODUCTION

Ladies and Gentlemen,

I would like to thank you for the opportunity to address this conference on automobile distribution in the new millennium. You have given this conference the somewhat provocative heading "Who will be in the driver's seat?". There is an obvious reply to this question: it should be the consumer who is in the driver's seat!

However, before the consumer can get behind the wheel of his or her new car, the car has to be transferred physically and legally from its birthplace, the factory, via an importer and/or a dealer to the buyer. It is this distribution process at the beginning of the "life" of a new motor vehicle involving the manufacturer, the distributors and the consumer, on which I will focus.

The "highway code" for this process is the EC block exemption on motor vehicle distribution and servicing agreements, Regulation 1475/95. Even if this code is - from the legal point of view - not compulsory, all vehicle manufacturers use it as a *de facto* binding framework for their distribution system. This Regulation dating from 1995 will expire at the end of September 2002.

Everybody would like to know of course what is going to happen to our "highway code" for motor vehicle distribution after this date. This will have to be decided after the Commission has adopted its Evaluation Report on the current Regulation. The Report has to be published by the end of this year. To discuss the future framework without first establishing whether the existing Regulation has worked would be to "put the cart before the horses".

# ARTICLES

The future of motor vehicle distribution is a hot topic for several reasons:

First, many changes have taken place since 1995 and more are likely in the near future. To give some examples:

- Manufacturers are about to re-organise their distribution systems in order to make them more efficient: after having obtained considerable cost savings from the suppliers of car components, manufacturers are now turning their rationalisation efforts to the distribution sector, which accounts for 30% of the cost of a new car.
- In particular, many manufacturers are reducing the numbers of their dealers. The reorganisation of the distribution network of DaimlerChrysler in France or the ending of all Honda dealer contracts in Germany are examples of this.
- E-commerce is a new and fast developing distribution tool: However, up to now, use of the Internet in the automobile sector has been limited to a virtual showroom. Actual sales via Internet are practically inexistent.
- As regards consumers, a motor vehicle is an expensive purchase and consumers pay attention to prices. In view of the price differentials across Europe, new information

technologies and the increased mobility of consumers, there are now real possibilities for consumers to shop around and to try to find the best deal.

In order to get a good deal, consumers sometimes wish to buy a car abroad, either directly or via a so-called intermediary. I should mention that consumers strongly and rightfully criticise the functioning of the Internal Market if they are unable to find a dealer who is willing to supply them or if they are discriminated against in relation to national consumers. In our experience, this still happens in too many cases. In this respect, I would mention the campaign by the British Consumers' Association, who told me that British car buyers feel that they are being "ripped off" and sent me some 20,000 protest notes signed by British consumers. I believe that such consumer actions cannot be ignored when we discuss the "highway code" for motor vehicle distribution.

It seems quite revealing that such radical consumer action appears to be limited to the car sector.

Secondly, the subject of today's conference is of great interest to those involved because the "highway code" for motor vehicle distribution is now under review by two

European competition authorities:

- As you know, my Directorate General for Competition is preparing an Evaluation Report on the Block Exemption Regulation for motor vehicle distribution and servicing agreements<sup>1</sup>, which is due to be published by the end of this year. As this evaluation process is well advanced, I would like to use today's forum to give you an insight into our preliminary factual findings. I again stress that this report will focus on the current regime for motor vehicle distribution and will not contain proposals as to the future framework.
- On 10 April, the UK Competition Commission's report on motor vehicle distribution in the United Kingdom was published by the Secretary of Trade and Industry, Mr. Stephen Byers. The Competition Commission found that there is an urgent need for a radical change in view of the negative effects the "highway code" generates on car prices in the United Kingdom: the UK Competition Commission's radical suggestion is to prohibit selective as well as exclusive distribution agreements in the car sector.

In view of these findings, Mr. Byers has ordered as a first step

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<sup>1</sup> See Article 11 of Regulation 1475/95.



a number of interim measures aiming at lowering resale prices immediately. However, he also clearly said that more drastic measures are being discussed with the European Commission.

Let me now turn to the preliminary findings of my Department in the current evaluation exercise.

#### WHAT ARE THE PARAMETERS OF THE EVALUATION ?

The parameters with regard to which this evaluation is carried out are those on which the Block Exemption Regulation has been based when it was adopted for the first time in 1985 and then amended in 1995, after some serious "fine tuning".

**As to the three main assumptions on which the Regulation is based:**

**The first assumption relates to the existence of effective competition in the motor vehicle industry.**

- As regards competition between car manufacturers, so-called inter-brand competition, the six largest manufacturers in Europe (Volkswagen, Peugeot/Citroën, Renault, General Motors, Ford and Fiat) together have a market share of about 75% of the European car market. We are therefore in an oligopolistic situation. Moreover, most motor vehicles are distributed in the

same way, via exclusive and selective dealers who are subject to the same types of restrictions. This aggravates the oligopolistic effect.

However, it cannot be denied that the availability of between 2000 and 4000 car versions in each country under about 50 brands with ever shortening product cycles indicates that there is competition in the car market. Increasing concentration in the industry (for instance the concentrations Ford/Volvo, Renault/Nissan, or Daimler-Chrysler/Mitsubishi) and the planned co-operation between General Motors and Fiat indicate, however, that we have to remain vigilant as regards competition at the manufacturing level.

- As regards competition between dealers belonging to the same network, so called intra-brand competition, car distribution agreements give dealers only limited scope to develop this kind of competition. One reason for the limitation of real price competition is the form of the dealer's remuneration, which is based on a standard manufacturer discount, giving large or small dealers almost the same margin. Competition between dealers also seems to be dampened by the allocation of exclusive sales territories, the exclusion of independent resellers and the banning of certain types of active marketing. These

restrictions prevent dealers opening subsidiaries or sales and service outlets outside their contract territory and becoming larger and more efficient in this way.

As regards intra-brand competition in trade between Member States, i.e. competition among dealers of the same brand but located in different Member States, competition seems to be even more limited: the practice of manufacturers agreeing sales targets with their dealers, which are focussed on national sales, and the practice of allocating new vehicles to the dealers based on such targets, gives dealers only limited possibilities to engage in parallel trade. Therefore, dealers are limited in their capacity to contribute to the creation of an Internal Market for motor vehicles, in which consumers' freedom to purchase new cars across borders should be a reality.

Moreover, the UK Competition Commission has found, and the preliminary findings of my Department tend to confirm this, that manufacturers' ability to end dealer agreements with only two years notice, seems to make it wise for dealers not to pursue a sales policy which their manufacturers dislike. This is all the more the case, because dealers cannot easily shift to another brand: normally all sales territories



are already “occupied” by other dealers.’

Based on these findings, it seems to me that the first assumption on which the Regulation is based and which relates to the existence of effective competition in this sector seems to have become – to a certain extent - questionable.

**The second assumption is that car dealers must also provide after-sales services.**

To put this in simpler words: some say there is a “natural link” between the sale of motor vehicles and after-sales services. In competition jargon, this is tying, which is normally considered as a serious restriction of competition.

According to recent indications, the existence of such a link is becoming more and more questionable, though it was used to justify the right of manufacturers to oblige all their dealers to offer after-sales services. I note that the UK Competition Commission also expressed serious doubts in its Report as to whether such tying is not excessive and contributes to make car distribution less efficient than it could otherwise be.

No technical reasons seem to exist for such a link: the so-called pre-delivery inspections of new vehicles could be carried out by the manufacturer or the

haulier, who delivers a new car to a dealer.

Looking at this “link” from the viewpoint of the dealers, based on the information available, the sale of new cars is not very profitable. By contrast, the after-sales services are the main source of their revenue. Therefore, today’s dealers will normally wish not only to sell cars, but also to provide after-sales services.

Moreover, consumer expectations may suggest that a good dealer has to provide after-sales services.

Based on the above the right given to manufacturers to force their dealers both to sell cars and to provide after-sales services, seems to have become questionable. The question whether or not such a right is still justifiable, is however complex and needs to be analysed carefully.

**The third assumption on which the Regulation is based says that brand specialists are needed for the repair of motor vehicles.**

I will briefly address this assumption. It is true that today’s vehicles are more and more complex and contain electronic devices, such as onboard diagnostic systems. This technical trend is likely to increase in the future in view of new safety and environmental requirements. This suggests that

the maintenance and repair of new cars can be done by specialists, who are closely connected to the manufacturer and who have the necessary diagnostic equipment needed to provide the full range of after-sales services.

However, one may question whether these specialists need to be dealers or service outlets belonging to the network of a manufacturer. If independent repairers really would have full access to all technical information, as required under the present Regulation, these undertakings would be perfectly able to repair and maintain modern motor vehicles, as is also recognised by recent studies.

**In conclusion:** For all three assumptions on which the current regime is based, it seems to me that one can have some doubts as to whether they still hold true today.

Let me now turn to the objectives pursued by the Regulation.

**The Regulation has four objectives.**

**The first objective is to strengthen dealers’ independence, to give them more leeway for their activity – in view of strengthening by this competition at the dealer level.**

The most important provisions of the Regulation which seek to achieve this objective are those which allow dealers freedom to



determine the prices and sales conditions at which they sell cars, to use spare parts of matching quality or to give them a say on the annual level of sales targets, stocks and number of demonstration vehicles.

However, from where we are today in our assessment, it seems that these measures have not had the desired effect for dealers or on competition. As manufacturers have the right to select their dealers based on quantitative criteria, and because dealers cannot grow by opening new sales outlets or new garages, today most dealers are small or medium sized undertakings. Moreover, since dealership contracts can be terminated upon two years notice, manufacturers can largely control dealers and end the contracts of dealers whose commercial behaviour they dislike.

Dealers' leeway to decide on their commercial policy is further limited by the margin system, which is common to all manufacturers and importers and used throughout the European Union: the margins of dealers are nearly the same everywhere and large dealers cannot obtain bulk rebates similar to those granted to fleet buyers. Therefore, dealers have little freedom to set their prices at different levels from other dealers in the same network.

The system of agreed sales targets and the planning and product allocation based on these targets do not seem to allow

dealers to react to changes in demand with sufficient flexibility; it creates rigidities in the market, which are highly unsatisfactory. To give an example: if foreign consumers want to order cars from a dealer, he is quite often unable or unwilling to sell cars for export within reasonable delivery times, since his sales target and product allocation is in most cases based on his normal business within his sales territory.

As regards dealers' right to sell vehicles of different makes, so called multi-marketing, the Regulation allows manufacturers to impose conditions, which - for most dealers - make this right economically unattractive. Therefore, not many dealers use this right to sell cars of different makes.

**The second objective of the Regulation relates to better access for spare part producers to dealers.**

According to the information received, most vehicle manufacturers seem to limit the freedom of spare part producers to supply spare parts directly to dealers belonging to the manufacturers network<sup>2</sup>. It is indeed surprising to see that manufacturers seem to flout the Regulation in a way which is

<sup>2</sup> According to the information received from car part producers, car manufacturers ask their suppliers not to sell such parts as spare parts (which match the quality of original parts) to the dealers directly.

close to falling under one of its black clauses<sup>3</sup>: by such behaviour they risk losing the benefit of the Regulation for their whole distribution network.

In sum, the objective of giving spare part producers better access to dealers does not seem to have materialised in practice.

**The third objective of the Regulation relates to putting independent repairers in a better position to compete in the after-sales market**

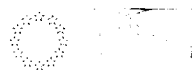
As regards the position of independent repairers, which the Regulation aims to strengthen by giving them access to original spare parts, my Department has found, that the independent repairers are generally content with their ability to source spare parts.

Independent repairers should also have access, on a non-discriminatory basis, to all technical information needed for the repair and maintenance of cars. To this end, a black clause<sup>4</sup> was introduced into the Regulation in 1995.

Although pragmatic solutions seem to have avoided major problems in the past, car manufacturers do not appear to have implemented transparent procedures for giving independent repairers unre-

<sup>3</sup> Article 6 pt. 10 of Regulation 1475/95.

<sup>4</sup> Article 6 pt. 12 of Regulation 1475/95.





stricted access to technical information at reasonable prices as required under the Regulation.

If this is the case, it is a major draw back, because technological knowledge is used to hinder independent repairers from doing their job. If independent repairers work without this knowledge, this would lead to safety problems and also environmental damage. It works also against the European Directive relating to air pollution by emissions of motor vehicles adopted on 13 October 1998. This provides that all manufacturers have to give full and unrestricted access to technical information upon a reasonable fee to all repairers.

**The fourth objective relates to materialisation of the Internal Market objective in favour of consumers and the impact of intermediaries' activity on the development of parallel trade.**

As the Commission's car price reports show, prices are still set on a national basis and vary considerably from one Member State to the other.

A recent test case for the functioning of the internal car market is the case of the United Kingdom. Prices for domestic buyers are, as you know, very high in this Member State if converted into euros, compared to other markets with similar car taxes.

Reasons for the price differential between UK prices and prices on

the Continent include, on the one hand, the appreciation of the Pound Sterling against the euro, and, on the other the fact that right-hand drive vehicles are more expensive because the numbers of such cars are smaller than the numbers of similar left-hand drive cars. It is true that both reasons are not attributable to the car manufacturers.

However, UK prices could only rise to these actual levels because, it seems, non-British manufacturers do not decrease their UK prices. Instead of using the cost advantage they have - due to their production outside the UK - to lower prices and to try to increase competition and their market share in the United Kingdom, foreign manufacturers prefer to earn greater profits and to sell less cars in this country, as the UK Competition Commission found in its report. Moreover, parallel trade by final consumers has clearly not been sufficiently significant in quantitative terms to put downward pressure on British prices. Manufacturers also seem to use the possibilities given to them by the Regulation to agree sales targets and on this basis to allocate new vehicles to their dealers in a rather rigid way and with the focus on the local demand in the territory of each dealer. This induces dealers to discriminate in favour of consumers from their own Member State against foreign buyers.

Moreover, it is apparent that manufacturers are not too

pleased if dealers engage in parallel trade and dealers are afraid to displease their manufacturer. Therefore, I do not attach too much importance to the fact that parallel trade into the United Kingdom has tripled for some manufacturers in the last two years. What matters is that it is still insufficient to put downward pressure on prices in the United Kingdom.

Finally, car intermediaries, who purchase a new car in a foreign Member State in the name and on behalf of a final consumer, often face just the same problems as the consumer in finding a dealer who is willing to supply.

**Two other points have been highlighted by the evaluation exercise of my Department.**

**The Regulation has not been applied properly by the car industry**

Apart from the well-known case against Volkswagen, where the Commission imposed a record fine of 102 Million ECU for restrictions of parallel trade, you may be aware that my Department had to investigate similar alleged infringements of other car manufacturers such as Opel Netherlands, Daimler-Chrysler, Peugeot/Citroën and Renault and a case of resale price maintenance relating to the new Volkswagen Passat in Germany. However, these cases are still under investigation and any comment from me on their



outcome would amount to speculation.

This all indicates however, that the car manufacturers at least do not seem to have much respect for the “highway code”, which is very generous towards them. Such misconduct will of course also play a role in the evaluation exercise under way.

**Another point relates to new marketing or distribution methods. Here the question we have to ask is, are they possible under the Regulation?**

The Internet is a new marketing tool, which creates important opportunities in the car sector as elsewhere. However, it is not only a tool for creating a virtual showroom. It can also give dealers and intermediaries new business opportunities. Because it knows no geographic barriers, the Internet allows dealers to promote their sales beyond their contract area and is therefore a tool which could very much help to integrate national markets into a wider Internal Market.

However, if we look at the Regulation and the two Commission Notices relating to car distribution, we can see that they are not at all adapted to a marketing tool like the Internet. More worryingly, my Department has had quite a few contacts with manufacturers and operators and it seems that the

existing rules are used by some manufacturers to prevent a smooth development of this new tool, where there is demand from dealers and consumers.

The question of the sale of cars via supermarkets is even more delicate. Although there is demand from supermarkets to sell motor vehicles, none of them has so far succeeded in obtaining regular supplies from a manufacturer.

#### CONCLUSIONS ON THE EVALUATION SO FAR:

If I may return to the picture I introduced at the beginning of my presentation when I compared the motor vehicle Block Exemption Regulation to a “highway code”.

- Based on the work undertaken so far by my Department, it would seem that the assumptions on which this “highway code” is based are at least questionable. As regards the objectives pursued by the Regulation, it seems that most of them have not been achieved. In particular, it seems that the main driver of the distribution process is still the manufacturer and that dealers do not have much freedom as regards the way in which motor vehicles are distributed. Moreover, the code has not contributed to integrate the national markets

and, more regrettably, it has not been properly implemented by many manufacturers, as the procedures against manufacturers for infringements of the Regulation show.

- If I may come back to the subject of this conference: “Who is in the driver’s seat?”, the following picture probably best describes the current situation, with only a little exaggeration:
- The manufacturer is in the back seat of the car and gives instructions to his chauffeur, the dealer, on how to drive down the distribution highway to the consumer, who buys the car. The manufacturer finally manages to bring the car down to the consumer, but not always, it seems, in the fastest, most economic and smoothest way possible: moreover, all too often the manufacturer appears to instruct the dealer, who should really be the one responsible for driving the car, to do things which are outside the “highway code”. In addition, according to consumers’ expectations, the European “highway code” seems not in all respects the best-possible solution to bring a new car to the consumer.

## THE COMMISSION'S REVIEW OF THE ALUMINIUM MEGER WAVE

By Dimitri GIOTAKOS, Merger Task Force

After the recent merger wave in the oil industry<sup>5</sup> which lasted from August 1998 to March 2000, the Commission has reviewed under the Merger Regulation concentrations in the aluminium sector, which could be qualified as the aluminium merger wave. These were the three-way merger between the Canadian aluminium producer Alcan, the Swiss Algroup (Alusuisse) and the French Pechiney, on the one hand, and the merger between the U.S. aluminium producers Alcoa and Reynolds, on the other. As a result of the merger investigation, the three-way merger of Alcan, Alusuisse and Pechiney - which would have created the world's leading aluminium company under the name APA - did not materialise, as Alcan and Pechiney decided to cancel their agreement in the light of the Commission's opposition to the operation. However, the other half of that merger - Alcan/Alusuisse - was authorised with undertakings.

Finally, the merger between Alcoa and Reynolds was authorised after the parties and the Commission agreed on a set of substantial undertakings.

Through its review of these cases, the Commission had the opportunity to investigate thoroughly all the stages of the aluminium supply stream, from raw materials, such as bauxite and alumina, to finished products, such as aerosol cans and other packaging materials. This provided the Commission with a complete picture of the sector and enhanced its administrative efficiency in dealing with subsequent transactions in the same sector or in other related sectors (such as users).<sup>6</sup> Moreover, these cases gave rise to some interesting analyses on product market definition and on the competitive assessment of mergers.

The purpose of this article is to set out the most important features, from a competition law

point of view, of the Commission's analysis of the above cases. This is particularly important as far as the Alcan/Pechiney case is concerned, as no decision was adopted (nor will any be published) after the withdrawal of the notification by the parties before the legal deadline.

### Two mega-mergers, three notifications

The first important feature of the above cases is that, while from an industrial point of view two mergers were under way - APA and Alcoa/Reynolds - from a jurisdictional point of view, the Commission received and reviewed three separate notifications - that is, Alcan/Alusuisse (case COMP/M.1663, decision of 14 March 2000), Alcan/Pechiney (case COMP/M.1715, aborted) and Alcoa/Reynolds (case COMP/M.1693, decision of 3 May 2000). This is so because the APA merger was structured in such a way as to give rise to two concentrations. Indeed, the notification requirement of the APA merger was triggered by two separate and independent public offers that Alcan launched, one for the shares of Alusuisse and the other for the shares of Pechiney. Although in the minds of the three companies involved a three-way integration was the final aim of their merger, the two offers were not conditional upon each other, to the extent that one could proceed without the other.

<sup>5</sup> The following cases were notified to the European Commission and reviewed under the Merger Regulation: BP/ Amoco; Total/Petrofina; Exxon/ Mobil; BP Amoco/Arco and TotalFina/Elf Aquitaine.

<sup>6</sup> This is particularly true for the current investigation into a merger between producers of beverage cans, which use as a raw material aluminium can body sheet, one of the products that the Commission examined in-depth in Alcan/Pechiney





The Commission considered the two transactions as constituting distinct and stand-alone concentrations, which had to be notified separately.

The separate notifications did not prevent the Commission from assessing the ultimate competitive effects of a three-way combination. In other terms, the structure of the deal was not aimed at circumventing the Commission's assessment of the global effects of the three-way merger, by assessing, and authorising, each one of the transactions separately from the other. Rather, this structure was motivated by other considerations, such as national labour laws (Works Council approvals in France and in Switzerland). However, it goes without saying that, from a tactical point of view, the choice of this structure for the deal would spread the risk of the whole of it being blocked. Indeed, after a four-month Phase II investigation in both cases, the Commission decided to authorise one of them (Alcan/Alusuisse) and was prepared to block the other (Alcan/Pechiney). Had the parties submitted one single notification, none of the two legs of the three-way deal would have gone through.

#### **Summary of the Commission's decisions**

In **Alcan/Alusuisse** three affected markets were investigated, namely alumina trihydrate or ATH, a flame

retardant material; lithographic sheet, a flat rolled product used in the offset industry; and semi-rigid aluminium containers, a packaging product used for petfood, human food, airline catering, etc.

In alumina trihydrate, the substantial combined market share of the merged firm would have resulted in the creation of a dominant position in the EEA market. In order to eliminate it and to restore the competitive conditions prevailing prior to the merger, the parties proposed to divest one of the two overlapping ATH plants, namely the one operated by Alusuisse at Martinswerk, Germany.

In lithographic sheet, the merger would have resulted in a duopolistic dominant position held by the merged firm and its main competitor, VAW. The resulting duopolistic structure of the market was supported, amongst others, by the symmetrical market shares of the two competitors and their structural link in the Norf joint venture in Germany. These, and other elements pertaining to the nature of the product and of the relevant market, could have induced the two competitors into collusive behaviour which could have substantially restricted competition in the relevant market. In order to eliminate such a likelihood, the parties proposed to divest the overlapping production facility, namely the Star aluminium rolling mill operated by Alusuisse at Bridgenorth, the

UK. This measure removed the competitive overlap, dispelled any possible doubts as to the creation of a dominant duopoly and restored the competitive conditions prevailing prior to the merger.

In semi-rigid aluminium containers, the high market share of the merged firm and the absence of alternative competitive responses led the Commission to conclude that the transaction would have created a dominant position in this market. In order to eliminate any such likelihood, the parties proposed to divest machines (as well as lamination technology, customer contracts and contract-related equipment) that produce semi-rigid aluminium containers. The capacity of these machines amounted to the overlap brought about by the merger. This measure removed the competitive overlap and set forth the conditions for the potential purchaser to become a viable and long-term competitor in the manufacture and supply of semi-rigid aluminium containers.

In **Alcan/Pechiney**, the Commission conducted an enquiry into five affected product markets, namely two flat rolled product markets and three packaging markets. The flat rolled product markets concerned were can body sheet, a raw material used in the production of beverage cans, and food can stock, similarly used in the production of food cans. The packaging markets were aluminium cartridges, used to



pack sealants and adhesives used in the car and construction industry, flexible packaging for processed cheese and aerosol cans.

In can body sheet, the Commission found that the market for aluminium can body sheet is separate from that for tinplate (steel) can sheet, in which case the merger would have resulted in a substantially high combined market share. Only four suppliers of this product are active in the relevant geographic market (the EEA), namely, apart from the parties to the merger, VAW of Germany and Elval of Greece. The Commission could not regard them as a competitive threat to the possible exercise of market power by the merged firm. Elval was too small and regionally-focused to capture market share from the merged firm; and VAW produced all of its beverage can body sheet at the Norf joint venture (jointly controlled with Alcan) and would be linked to the merged firm through that joint venture. As a result of its capacity constraints and its impossibility to remove them without the consent of its Norf partner, VAW's incentives to compete would have diminished significantly after the merger. Moreover, the arrangements on the cost allocation between the two partners at Norf gave the merged firm the possibility of raising VAW's costs, by simply re-arranging its product mix at Norf. This was considered to represent a credible threat of retaliation at the disposal of the

merged firm. Under these circumstances, the most rational course of action to be followed by VAW was to align its behaviour on that of the merged firm and become a price taker. No mitigating circumstances to the market power of the merged firm were found to exist. Consequently, the Commission considered that the Alcan/Pechiney transaction would have created a dominant position in the market for beverage can body stock.

The merger would have created a dominant position in the market for food can sheet. Although food cans are made of either tinplate or aluminium, aluminium and tinplate can sheet were found to constitute two separate product markets of EEA geographic dimension. The combined market share of the merged firm would have been substantial whereas the next competitor, VAW, would have five times smaller a market share. However, as for beverage can body stock, VAW's incentives to compete would have been reduced as a result of its participation in the Norf joint venture. The remaining competitors were small, capacity-constrained and unable to capture market share from the merged firm without heavy investments in capacity and quality. As a consequence, the Commission considered that the concentration would have resulted in the creation of a dominant position in the market for food can sheet in the EEA.

The merger also raised competition problems in three packaging markets, namely aluminium cartridges, aerosol cans and flexible packaging for processed cheese (cheese foil). Although Alcan does not produce aerosol cans and cheese foil, the merger would have brought together the respective businesses of Pechiney and Aluisse (which Alcan was authorised by the Commission to acquire), in those products.

In aluminium cartridges, the Commission found that the merger would have created the dominant producer and supplier of aluminium cartridges in the EEA.

As far as aerosol cans were concerned, the Commission found that tinplate and aluminium aerosol cans do not belong to the same product market. There is a specific demand for aluminium aerosol cans, motivated by the superior characteristics of that metal. The merged firm would have had a considerable share of the aluminium aerosol cans market, six times higher than its nearest rival. Moreover, it would have controlled by far the largest share of overcapacity, which exceeded the production capacity of any of the smaller suppliers, placing thus the merged firm in the best position to win a price war. The Commission concluded that the proposed concentration would have led to a dominant position in the EEA market for aluminium aerosol cans.



Finally, in the market for cheese foil, the merged firm would have had a large market share, three times that of the nearest rival. The merged firm would have been the only supplier with dedicated production lines for cheese foil which would have given the new company a considerable cost advantage over rivals. The Commission concluded that the proposed concentration would have led to a dominant position in the EEA market for lacquered aluminium foil for the packaging of cheese.

Although the parties proposed a series of undertakings that could alleviate the Commission's concerns in almost all the product markets, they were unable to sever their link with VAW - their immediate competitor in the flat rolled product markets - by disposing of their 50% participation in the Norf joint venture. Such a disposal was perceived as a deal-breaker and the parties eventually decided not to proceed with their merger and notified to the Commission the cancellation of the Alcan/Pechiney leg of the three-way merger (for more details, see below: chapter on undertakings).

Finally, in **Alcoa/Reynolds**, the Commission identified competition concerns in relation to three product markets: the merchant market for smelter-grade alumina (SGA), the market for commodity alumina hydrate and that for high purity P0404 aluminium.

Smelter-grade alumina is the raw material used by smelters to produce aluminium metal. The merging parties' combined assets (alumina refineries) and global production capacity would give them an outstanding position as the largest supplier of SGA to competing smelters. Moreover, the merger would bring under the control of the merged firm the lowest-cost refineries in the world, those located in the Darling Range, a geographic area in Australia. Combining the refineries which were already in the portfolio of the merging companies with the lowest-cost refineries would have resulted in the merged firm being capable of controlling the entry and future development of competitors in this market. This meant Alcoa/Reynolds would be able to increase capacity or output at a very low cost to discourage entry or expansion by competitors at times when alumina prices are high. In order to address these concerns Alcoa proposed to divest Reynolds' share in one of the Darling Range refineries, namely, the Worsley refinery. This was the only Darling Range asset that Reynolds would have contributed to the merged firm. Therefore, its divestiture removed the competitive overlap.

In relation to commodity alumina hydrate (used as a raw material for the production of detergents as well as in the purification of water), the merger would have created a dominant position in the EEA market. The parties offered to

divest Reynolds' overlapping activity in the EEA, namely its 50-percent stake in Aluminium Oxid Stade GmbH, a German alumina refinery controlled jointly with VAW. The removal of the competitive overlap eliminated the dominant position that would otherwise have been created in the commodity alumina hydrate market in the EEA.

Finally, in relation to P0404 high purity aluminium, the merger would have created a vertical relationship conducive to vertical foreclosure of a downstream competitor. P0404 is a particular grade of primary aluminium metal, used in the manufacture of aerospace aluminium alloys. Alcoa is a producer of such alloys whereas Reynolds is the outstanding producer of P0404 and a supplier to Alcoa's only competitor in the aerospace alloys market, namely McCook Metals. As a result of the merger and given the absence of any ready reply by other smelters to commit to the production of P0404 for McCook's needs, McCook ran the risk of losing its supplies of P0404 raw material and, therefore, could have been shut out from the downstream aerospace alloys market. To address this concern, Alcoa offered part of a smelter that currently produces P0404 to a third independent party. This will enable the acquiring party to supply P0404 to non-integrated manufacturers of aerospace alloys in sufficient quantities so

as to cover a potential growth in the demand for aerospace alloys.

### Specific issues raised by the aluminium mergers

The review of the aluminium mergers raised a number of specific issues of interest to competition law practitioners. These are outlined in the following paragraphs.

#### 1. Flat rolled products may not constitute one single product market

First of all, the Commission had the opportunity to revisit its previous product market definition in relation to flat rolled products.<sup>7</sup> Flat rolled products (FRPs) are semi-finished products that are produced in aluminium rolling mills. They constitute the raw material for the manufacture of several finished aluminium products (ranging from industrial aluminium plate to household foil). FRPs comprise over fifteen categories of products, some of which correspond to a specific end application, whereas some others may be multi-purpose products (a large part of the latter is stockist material which cannot be allocated to specific sectors).

The crucial requirement of an aluminium rolling mill is to be able to produce as many types of

FRPs as possible, so as to optimise its product mix - that is, to shift production to those FRPs which at a given place and time offer higher rolling (profit) margins. It is, therefore, very tempting to argue that FRPs constitute one single relevant market, because of the high degree of supply-side substitutability. However, this finding was not confirmed by the in-depth investigation in the APA cases. This has shown that the conditions of competition are not the same across all the types of FRPs, which may justify the distinction of certain types of FRPs as separate product markets.

Firstly, the degree of supply side substitutability varies from one FRP type to another. In general, aluminium rolling mills produce a range of FRPs, the so-called product mix. Different types of FRPs sell at different prices and their relative profitability is reflected in the rolling margin (that is, the profit margin resulting from rolling a particular type of FRP). Each rolling margin 'contributes' to the overall profitability of the mill. As the ultimate goal of a mill is to maximise its profitability, aluminium producers try to optimise the product mix of their mills, by producing the highest-margin types of FRPs within the availability of their rolling and finishing equipment. However, not all the mills are equipped to produce all types of FRPs. Thus, when it comes to several specific types of FRPs - such as in

particular those of concern in the APA cases, i.e., beverage can body stock, food can stock and lithographic sheet - only a few mills in the EEA are capable of producing them. Those types of FRPs are products relatively difficult to make and, as a result, they require a high degree of management commitment, workforce discipline and different operating practices. In addition, the rolling margins achieved in producing these types of FRPs may be lower than in other, more standardised types. The high quality requirements and the relatively small rolling margins have dissuaded several mills from setting up production processes that would enable them to include those products in their product mix. All the more so considering that the buyers of such types of FRPs require their suppliers to pass stringent qualification tests that may last several years before a long term commercial relationship is set up. Therefore, although the supply-side substitutability argument seems relevant in respect to the standard FRPs categories (standard sheet, plates, foil stock, etc.), it was not supported by the market investigation with respect to products such as those dealt with in the APA cases. Rolling mills not currently active in the production of those types of FRPs could not start competing in those markets in a timely and immediate fashion, even in case of a non-transitory increase of 5%-10% in the rolling margins. Therefore, on the supply-side,

<sup>7</sup> Alcoa/Alumix (case N° IV/M.675, 21 December 1995); Alcoa/Inespal (case N° IV/M.1003, 24 October 1997); VAW/Reynolds Metals (case NO IV/M.1110, 19 May 1998)



the presence of a large number of mills could not influence the competitive conditions prevailing in those types of FRPs which were defined as distinct product markets.

Secondly, the conditions of competition in those distinct markets were not influenced by the existence of aluminium mills outside the EEA. One could have argued that the FRPs geographic market is not limited to the EEA but also comprised Eastern European countries, Turkey, as well as Russia and the CIS. In earlier decisions in the aluminium sector, the Commission had defined the markets for FRPs as being at least EEA-wide. In the APA cases, the investigation on the concerned FRP types showed that competition took place at the EEA level. Import duties vary from 7.5% to 12%. Even if some non-European countries have duty-free access to the EEA market, for customers the geographic market for those types of FRPs was determined more by the quality and technological guarantees of the producers and by the need for just in time deliveries and short lead times. Long distance transportation required a very good control of the supply chain management, stocks and logistics. As non-EU producers, but also some smaller EU-based producers, reportedly had a lower level of supply reliability, customers were required to hold larger inventories for their supplies from Eastern European countries and Turkey, relative to

the average rate of sales of their finished goods, than for their supplies by incumbent EU-based suppliers, including the merging parties. The larger inventories increased the customers' working capital related costs and therefore their unit costs. For this reason, almost no imports whatsoever had been recorded in the EEA from Russia, Turkey or the Eastern European countries, in particular for the types of FRPs mentioned above.

As far as other types of FRPs were concerned, imports from Russia and the CIS in 1998 amounted to 0.7% of EEA consumption, whereas those from Eastern European countries and Turkey to less than 5%. The categories of FRPs that were produced at rolling mills in these countries comprise the following: standard 1xxx, 3xxx and 5xxx sheet; building sheet; foil stock; plate and heat treat, that is seven out of at least fifteen categories of FRPs.

In conclusion, the Commission did not accept the argument that FRPs should constitute one single product market. This product market definition set out clearly that supply-side substitutability does not only refer to the technical ability to shift production around various products (which would then constitute one single market), but also to the economic feasibility to perform such a switch in a timely and immediate manner as well as to the acceptance of the product by the market place (which takes into

account accreditation and other qualification procedures that may limit the readiness of the switching).

## **2. Aluminium and steel (tinplate) beverage can body sheet are distinct product markets**

Can body sheet is used in the manufacture of aluminium beverage cans. However, as beverage cans are made of either aluminium or steel, the question that arose was whether the raw materials, aluminium and steel can body sheet, belonged to the same or to two separate product markets.

The Commission concluded that the two raw materials do not compete against each other. This could appear to be in contradiction with a recent Commission decision following an in-depth investigation<sup>8</sup>, where it had been stated that "aluminium is considered by most of the customers as a direct substitute for tinplate" in that "major European can manufacturers are able to make beverage cans out of both tinplate or aluminium". Nevertheless, this precedent did not bind the Commission for the purposes of product market definition in the Alcan/Pechiney case. The above statement was not part of a product market definition analysis, but of the competitive assessment of the notified operation. It was used to

<sup>8</sup> Case N° IV/ECSC.1310 – British Steel/Hoogovens (15 July 1999)



prove that the said operation would not lead to the creation of an oligopolistic dominant position held by manufacturers of tinsplate can body stock, given the potential competition stemming from aluminium. Therefore, the statement did not consider the immediate substitution effect between tinsplate and aluminium in the presence of a small but significant non-transitory increase in the relative prices of the two materials, which is the test that the Commission uses in order to delineate relevant product markets (SSNIP test).

Aluminium and tinsplate beverage cans have an approximately 50:50 share in the EEA.<sup>9</sup> Based on this split between aluminium and tinsplate cans, one could argue that the two raw materials compete against each other and that the reason for the market penetration of tinsplate lies in its price differential compared to aluminium, a structurally more expensive metal. One could also argue that can makers have a choice between the two metals and take decisions on the basis of their relative prices; that can makers can and do switch their can manufacturing lines from aluminium to tinsplate, when the economics of aluminium become

unattractive; and that, based on their switching threats, can makers may discipline the pricing of aluminium can body stock suppliers. Overall, one could argue that aluminium and tinsplate can body stock compete for market share and therefore belong to the same product market.

However, the Commission's market investigation has indicated that there are several reasons limiting the substitutability between aluminium and tinsplate can stock.

- Technical advantages

Aluminium is a lighter metal than steel. The same goes for aluminium can body stock and of course for the can itself. Lighter cans contribute to the reduction of transport and handling cost for can makers, bottlers and retailers. In addition, the number of cans obtained from a kilogram of aluminium is double that obtained from a kilogram of tinsplate. This significant logistic and handling advantage of aluminium over tinsplate influences the choice of can makers and fillers.

- Mechanical properties and marketing considerations

The mechanical properties of aluminium are superior to those of tinsplate. Aluminium offers a better formability (e.g., aluminium cans can be embossed and shaped), which may become a driving factor in

the choice of a bottler and therefore of a can maker. Of all the metallic cans, aluminium ones offer better printing quality. This may contribute to a better marketing of a brand of beverage. Brand owners would use aluminium for marketing reasons (launch of new products and brands, re-positioning of existing failing brands, etc.) as well as for some particular designs, colours and decorations, where tinsplate cannot offer the same appearance as aluminium. Finally, aluminium cans offer more brightness and metallic effects, which reportedly play a significant role in attracting the consumer.

- Environmental considerations

Environmental reasons, in particular recycling and the resulting high value of aluminium scrap, keep aluminium and tinsplate well apart. As opposed to tinsplate cans, used aluminium beverage cans are more attractive to the aluminium mills as they are uncontaminated metallurgically and can be re-melted to become again aluminium cans. Tinsplate cans have been regarded as less attractive to recycle, as aluminium has a greater scrap value, which enters into play in the perception of the consumer and most importantly in the economics of can manufacturing.

- Price factors

The deciding factor for the choice of can makers is not only the relative price of the metal. In

<sup>9</sup> This is average EU data which does not reflect the substantial differences of aluminium or tinsplate penetration in individual Member States. For instance, in some countries (Nordic countries, Greece, Italy) only aluminium beverage cans are sold.





their choice, can makers are not only driven by own cost considerations, but also by two other factors, that is, the demand of their customers, the bottlers, on the one hand, and their existing infrastructure of can manufacturing lines, on the other (all the can makers have a mix of aluminium and tinsplate lines, although in different proportions). Bottlers show preferences for one or the other metal, according to endogenous (i.e., marketing) or exogenous parameters (i.e., recycling constraints or incentives). Thus, can makers are not free in their choice of material, but have to accommodate their customers' requirements and their own profitability.

One could argue that because of their ability to respond to changes in relative prices, can makers would produce more tinsplate cans and fewer aluminium cans on their existing lines, in case of a supra-competitive increase in the price of aluminium. In response to this argument, it has to be considered that the ability of can makers to switch from one metal to the other is constrained by the demand stemming from their customers, the bottlers. As explained above, the latter place orders for a mix of aluminium and tinsplate cans, or in some countries, for aluminium cans only (all-aluminium countries). Since they pay practically the same price for their cans, irrespective of the material used, their choice of the material is not driven by cost considerations but

by other factors, as those mentioned above (marketing, environmental, etc.). For the can makers to replace aluminium cans with tinsplate cans, they will have to persuade their customers to accept this change. However, the bottlers will not accept this, primarily because of their own reasons (marketing, environmental) and secondarily because they pay almost the same price for both types of cans. Therefore, the argument that can makers may switch their aluminium lines into the production of tinsplate cans is not relevant, as it does not consider whether, independently of the prohibitive switching costs, the bottlers would accept such a switch for cost reasons.

The Commission's investigation has shown that the relative prices of aluminium and tinsplate can body sheet do not track each other. Aluminium is more volatile than steel and shows price variations that are not reflected in the price of tinsplate. The Commission examined the price evolution of the two materials over the last seven years and concluded that aluminium has not been constrained by the relative price of tinsplate, but rather followed the London Metal Exchange (LME) trends.

One could also argue that can makers have switched from aluminium to tinsplate in the past, as a result of variations in the price of aluminium. Indeed, two can makers switched six lines to tinsplate, in 1996, as a result of a

price increase in aluminium. Because of the exceptional circumstances that prevailed in the LME aluminium prices at that time, the Commission did not consider the 1996 switches as being characteristic of any price competition between the two raw materials. Further to the Memorandum of Understanding between aluminium producing countries of 1994, the LME entered into a sharp and uncontrolled price increase of more than 50% compared to the levels prevailing in 1993. As the price of primary aluminium surged, the attractiveness of tinsplate was enhanced. As a result, six can lines in the UK and Italy were converted from aluminium to steel. These conversions were neither easy nor irreversible. They are, indeed, an isolated case and no further conversions of lines has taken place since that date. These conversions were motivated by the steep and artificial increase of the LME price and, in some way, they reflected the discontentment of end users of aluminium towards what they perceived as a permanent aluminium overpricing. Given the exceptional circumstances prevailing between 1994 and 1996 (i.e., the significant price increase of the LME), these conversions of lines were not characteristic of the dynamics of the can maker's choice between aluminium and tinsplate can body stock. Would the LME prices have increased by 5% to 10% (as they had in previous years), it would be doubtful whether such

conversions would have occurred. Can makers questioned about the economics of the switches said that the decision to switch lines was a major long-term business decision, which had very significant cost implications and which had to be taken with up to 12 months lead-time.

It can be concluded from the foregoing that the conversion of lines from aluminium to tinplate, and vice-versa, was not an easy alternative for can makers in case of an increase in the relative costs of metals. Conversions have occurred in the past under exceptional circumstances and have probably helped can makers to increase their leverage in their negotiations with aluminium producers. However, they are neither likely to constitute a common feature of the market nor a credible threat to suppliers to defeat or discourage a 5% to 10% price increase in aluminium can body stock.

#### - Manufacturing costs

The relative prices of the metals are not the only indicators of their relative competitiveness. Can makers must also take into account the can manufacturing cost of each metal, that is, the cost associated with the production of a beverage can. The cost structure of can manufacturing contains features that tend to equalise the final cost for both metals, notwithstanding the significant

initial price difference in the input metal.

In general, aluminium can manufacturing cost is only 3% to 5% higher than tinplate can manufacturing cost, although the price of aluminium can body stock may be 30% higher than that of tinplate. The differing cost structure is due to several advantages that aluminium presents in its transformation process. The most important are: decoration and coating, where tinplate requires extra internal coating and extra external decoration; utilities, where tinplate costs are higher (although washer chemicals for aluminium are environmentally difficult to handle); depreciation is lower for aluminium as fewer machines are used; spoilage and scrap value, where tinplate has higher spoilage rates and aluminium has much higher scrap value; metal cost, where tinplate is cheaper at delivery stage, but total costs are similar.

Aluminium producers, however, do not take their pricing decisions on the basis of their customers' manufacturing cost, but rather on the basis of the metal price that they will charge to can makers. Thus, a given increase in the aluminium can body stock price does not imply the same increase in the manufacturing cost of beverage cans. For instance, a 5% to 10% price increase in aluminium can body stock will result in a 3% to 7% increase in the cost of manufacturing an aluminium beverage can. This is so because

several items in the aluminium can manufacturing cost structure can compensate the higher price of aluminium. For example, aluminium entails lower manufacturing costs than tinplate and, more particularly, it has a much higher scrap value than tinplate. Overall, a price increase between 5% to 10%, and the resulting lower increase in the manufacturing cost, would not necessarily be defeated by a switch of can makers to tinplate.

Overall, the Commission's investigation has shown that aluminium presents objective characteristics that detach it from possible competition from tinplate; that aluminium and tinplate can body stock prices do not track each other neither do they present any price correlation; that switching can manufacturing lines to tinplate is not easy and when it happened it was prompted by an exceptional increase in the price of aluminium; that the loss of demand for aluminium generated by such switches was too small compared to the percentage of the price increase; and that aluminium suppliers can price discriminate against can makers. For all these reasons, the Commission took the view that aluminium and tinplate can body sheet form two separate product markets.

### **3. The assessment of the Norf joint venture (Alcan/VAW)**

Another crucial feature in the Commission's analysis was the existence of Aluminium Norf



GmbH ("Norf"), a 50:50 joint venture rolling mill between Alcan and VAW, which would have become APA's immediate competitor after the merger.

One could argue that Norf is not a classical production joint venture but a time sharing facility, which would not restrict competition between the parent companies as a result of the merger. It has been structured in such a way, as to minimise the information flow between the parents. Thus, one parent could not anticipate the competitive actions of the other. Competitively sensitive information, i.e., information on the parents' own customer bases, selling prices, quantities of finished product delivered, etc., is out of the scope of the joint venture, and therefore remains out of the parents' reach. Moreover, as the final product differentiation may take place at a later stage for certain products and could even be done at mills other than Norf (e.g., lithographic sheet), ultimately one parent could not know the exact product mix nor the differing cost basis of the other parent. Finally, since the Norf arrangements do not involve profit sharing between Alcan and VAW, it is not rational for the parents to engage in collusive behaviour.

The Commission considered that the degree of interdependence stemming from the joint operation of Norf prevents it from qualifying as a simple time sharing facility. In substance,

Norf operates as a production joint venture. The Commission's analysis took into account the co-operative aspects of its joint operation, in particular, the governing principle of consensus between the parents, resulting from the various agreements concerning the operation of Norf. The large amount of industrial co-operation to be achieved between the parents is an indication that the degree of integration of the parents in Norf goes beyond what could be characterised as a time sharing facility. Norf is the only rolling mill joint venture world-wide<sup>10</sup>. When it was set up, it was considered to be a rather risky project as it was already generally accepted that it could only be operated at a sufficient level of efficiency if both parents would 'pool together'. At Norf, there are joint production facilities and one single labour force serving the needs of both parents in the same way. In terms of the costs pertaining to the operation of Norf, it has, so far, been in the interest of both parents to reduce them by

maximising the utilisation of the assets. Although each parent determines its product mix by himself, the required production process is determined by the Norf management. For example, the production routing of all products being manufactured at Norf is evaluated by the common technical staff of the joint venture. At Norf, there is one common department responsible for determining the production sequences for both parents, which makes its technical findings available to both parents. According to many analysts, it would not have made economic sense to jointly build and operate Norf if a certain FRP type produced by one of the parents would be produced differently by the other parent.

At Norf, there are several dedicated production lines (including both the hot and cold milling process and the finishing machines, such as the slitters) for the various types of FRPs that Norf can produce. The dedication of lines stems from the common interest of both parents to reduce their common costs. Therefore, up to now, there have been joint programs by the parents to reduce, through standardisation, the number of alloys and specifications used in the production of various types of FRPs. Such a common approach responds to the expectation by the parents that it should lead to the minimisation of complexity costs and to the generation of economies of scale. The current optimisation at Norf is based upon the

<sup>10</sup> There exists another rolling mill joint venture between Alcan and ARCO in Logan, USA. However, this is not comparable to Norf in many respects. First, ARCO has divested its aluminium activities and the Logan mill is only managed by Alcan; second, the Logan mill is much smaller in scale and therefore less complicated to operate than Norf; and third, Logan can only produce can body and end stock and, therefore, even if it were jointly run, it would not entail such a complex management of two different competitive product mixes.

suggestions made by the Norf management to the parents. The parents will then agree on such standardisation, in the interest of maximising the utilisation of the assets and of minimising costs. Finally, investments in Norf and the determination of the proper technology have, so far, been jointly agreed by both parents.

For the foregoing reasons, it can be concluded that the Norf joint venture is not a time-sharing facility. Consequently, the Commission considered that the presence of the two largest EEA producers of FRPs in a joint structure which manufactures products in which the merged firm would acquire important market positions, might pose competition problems. These would stem from the legal structure of Norf and the resulting de facto co-operation between the parents; from the strong dependence of VAW on Norf and its capacity constraints in other rolling mills; from the possibility of Alcan to veto investments proposed by VAW; and from the ability of the merged firm to raise VAW's costs and hence decrease its ability to compete. Overall, the asymmetrical capacity constraints in favour of the merged firm, and the credible threat of retaliation on VAW would have created a situation where collusion among the parents of Norf would be sustainable in the long run. This situation is analysed here below.

Firstly, the legal structure at Norf requires a constant

consensus-based co-operation between the parents. For Norf to be able to effectively continue its operations after the merger, the parents would have to agree on several aspects concerning the production process. This would have increased the transparency and predictability in the competitive strategies of the parents. For instance, technical and financial co-operation between the parents would have been necessary in order to carry out, under unanimous decision-making, the implementation of business plans. Not only major investments would have required the consent of both parents, but also routine operations would have created opportunities for co-operation (e.g., maintenance and modernisation works). The argument concerning the limitations to the exchange of information between the parents disregarded the difference between a pre-merger situation and a post-merger one. The question was whether the competitive situation would change following the proposed merger. In that respect, one may argue on an ex-post basis, that in a pre-merger situation the exchange of information did not prevent two joint venture partners from competing effectively with each other. By contrast, the post-merger relation between the same parents is a matter of the future, to be assessed in the context of the market structure likely to prevail following a notified concentration. In the present case, after the merger, for Norf to be able to effectively continue

its operations, the merged firm and VAW would have to agree on several aspects concerning the production process.

Secondly, the merger would alter VAW's incentives to compete. Ultimately, VAW would have more incentives to align its competitive behaviour on that of the merged firm rather than compete aggressively against it. This stemmed from the combination of two factors: VAW's strong dependence on the output of Norf and its capacity constraints, on the one hand, and the possibility of Alcan vetoing expansion or other investments (the latter in conjunction with the overcapacity of the merged firm, which would have the largest under-utilised rolling capacity in the EEA), on the other hand.

VAW was found to be totally dependent on Norf for a number of FRPs (beverage can body stock and end stock, lithographic sheet, brazing sheet, etc.). Prior to the merger, Alcan was also dependent on Norf; however after the completion of the APA merger, the combined entity would no longer depend on Norf, as additional hot rolling capacity would be brought along by the other merging partner. If VAW decided to compete fiercely against the merged firm with a view to capturing additional market share, it would need to increase its rolling capacity. Thus, VAW would need to reach an agreement with the merged firm. The latter could have blocked such an investment if it



had perceived that this would enable VAW to compete against it.

Thirdly, economic theory suggests that the firms' asymmetrical capacity constraints affect the degree of collusion in the short run, as well as in the long run. This is further enhanced through the possibility of a credible threat of retaliation. In the APA cases, the existence of asymmetric capacity in favour of the merged entity and the existence of *de facto* punishment mechanisms, stemming from the functioning of Norf, would affect the incentive of VAW to engage in a price war.

The condition relating to the asymmetry of capacity constraints was illustrated by the fact that the merged firm would have the largest over-capacity in the EEA. The condition relating to the credible threat of retaliation was illustrated by the asymmetry in the degree of dependence of VAW and the merged firm on Norf. The merger would enable the merged firm to raise rival VAW's costs. Because of the additional rolling mills it would acquire from its merging partners, the merged firm would be more flexible on the supply-side to shift production to and from Norf than was the situation for Alcan prior to the merger. Therefore, the merged firm could increase VAW's costs at Norf while re-organising its production around the merged firm's new rolling system (it was announced that such a post-merger re-

organisation would result in cost savings of several hundred million dollars). Ultimately, the benefit of raising VAW's costs is that VAW would be forced to charge higher prices to customers, and this would increase the demand for the merged firm's output, thus enabling it to raise the prices. Alternatively, if VAW decided not to increase its prices, it would suffer a decrease in its profitability.

The way in which the merged firm could increase VAW's costs while re-organising its product mix at Norf could be described as follows. As mentioned above, the functioning of Norf is based on the common optimisation of the parents' product mix. Any change in the product mix is likely to alter the cost situation at Norf. Under certain circumstances, the change in the cost structure may be more harmful for one parent than for the other. For instance, as the costs to be borne by each partner are based on the factual level of utilisation of the facilities, should the merged firm decide to re-distribute some FRPs away from Norf, or to replace certain FRPs with others, VAW would have to bear the costs arising out of the unused capacity, disproportionately. Any change in the product mix of Norf would impact on the operation of the production process and of the accompanying equipment (i.e., cast house, types of alloys, scrap chain, number of passes, finishing equipment, etc.). This would disturb the cost sharing

equilibrium on the basis of which Norf has been able to optimally function to date. Additionally, in the day-to-day operation of Norf, the parent companies would have to pool together to work efficiently. The diminution of the relative commitment by one parent would impact negatively on the profitability of the other. Given VAW's strong dependence on Norf, it was more likely that a relaxation of the merged firm's commitment to Norf would raise VAW's costs and affect its ability to compete.

However, one could contest the economic rationale of such an attempt to raise the other partner's costs so as to weaken its competitive position post-merger. A strategy consisting in raising rivals' costs would be sound if the deterioration of the rival's cost basis were greater than that of the merged firm's. In the APA cases, a re-allocation of the product mix of Norf would not make economic sense if it had as a result to leave the merged firm's share of Norf unutilised, as this would amount to a severe opportunity cost. Thus, a change in the product mix of Norf, or the re-distribution of certain products away from Norf, would have to be compensated by keeping Norf re-loaded. The Commission calculated the impact on the marginal cost of VAW and of APA as a result of the re-allocation of two of the affected product markets (i.e., lithographic sheet and beverage can body stock) away from Norf and



the re-loading of Norf by other types of FRPs. In the case of lithographic sheet, it was estimated that both parents' marginal costs would increase and that VAW's costs would increase slightly more in comparison to those of the merged firm. In the case of other FRP types, in particular, beverage can body stock, the increase would be more sharp for VAW, as the re-allocation of that product away from Norf would have resulted in cost savings for the merged firm and a cost increase for VAW. Overall, the resulting cost difference to the detriment of VAW would have been quite important (between 5% and 10%).

The Commission did not agree with the argument that a cost punishment on VAW would inflict a dissuasive cost increase to the merged entity. Under both re-allocation scenarios in the preceding paragraph, VAW's cost penalty was bigger than the merged firm's. Nor could the Commission accept that VAW's cost variation was too small to prevent it from competing aggressively. The margins achieved in the rolling business are minimal. Therefore, a small scale variation in the cost basis may have significant consequences on the competitiveness of a producer. As a result, VAW would not be keen to engage in a price war. It would, on the contrary, align its behaviour on that of the merged firm, in the expectation to maximise its profits at a given

output through higher prices rather than higher market share.

In addition to that, and quite apart from the situation of dependency of VAW vis-à-vis Norf, the fact remained that any attempt on the part of either the new entity or VAW to gain market share at the expense of each other would necessarily have an immediate effect on the rate of capacity utilisation and the product mix at Norf and consequently on the cost structure of both parties. The very existence of Norf thus modified the incentives of the parties to compete. Furthermore, the very fact that the cost basis of all FRP types manufactured at Norf would be the same for both parties, diminishes, by itself, the amount of price competition that the parties could realistically implement vis-à-vis each other.

Furthermore, the merged firm and VAW competed with each other in a multitude of other markets. The prospects for retaliation in such other markets, stemming from multi-market contacts, could provide a further rational reason for the alignment of strategies between the merged firm and VAW.

As a consequence of the foregoing elements, the Commission considered that the existence of Norf would significantly reduce competition between the merged firm and VAW. In accordance with the approach which must be followed in the context of merger control, the Commission

assumed the most rational course of action which, in the markets analysed in the APA cases, would be the alignment of the competitive strategies of the merged firm and VAW.

#### **4. Undertakings that were unable to form the basis for an authorisation in Alcan/Pechiney**

In order to address the Commission's concerns as to the cohabitation of APA and VAW in the Norf joint venture, the parties proposed to remain a joint partner in Norf, in exchange for loosening the joint venture link. The parties proposed undertakings in order to remove (i) the concerns about the flow of confidential information between the parent companies, by putting in place confidentiality obligations and firewalls between the parties and VAW; (ii) the concerns about Alcan's possibility to raise VAW's costs by changing its product mix at Norf, by proposing to amend the current Norf cost allocation formula so as to ensure that no action of the parties would negatively affect the costs to be borne by VAW at Norf; and (iii) the concerns about Alcan's right to block investments aiming at expanding VAW's capacity at Norf, by proposing to amend the provisions relating to capacity expansions and allow any party to expand capacity at Norf unilaterally.

Overall, the parties offered undertakings which provided for





the amendment of its existing joint venture agreements with VAW. However, these undertakings could not be performed by the parties alone but could only be implemented with the prior agreement of VAW. Besides the fact that these undertakings were not self-executing, the Commission did not consider them able to eliminate the risk of collusion at Norf. Firstly, the undertaking relating to the veto right on investments concerned only investments related to the installation of new facilities at Norf (i.e., a new rolling mill). All the remaining investments were not caught by the undertaking (i.e., de-bottlenecking of current capacities, maintenance work, modernisation of working methods and other day-to-day improvements). Moreover, the undertaking was qualified, in that the parties would not veto any expansion by VAW provided that such expansion would not "adversely affect the existing operations of the other party at Alunorf". This provision would be subject to interpretation and highly likely to give rise to vivid discussions between the parties and VAW. Secondly, as to the undertaking to put in place "stringent confidentiality procedures" at Norf, the Commission considered that besides the fact that such 'firewalls' could not be effectively monitored, any confidentiality procedures with respect to production schedules and sales forecasts could adversely affect the functioning

and competitiveness of Norf. Indeed, if the parent companies were selective as to the information they would pass on to the Norf production staff, then Norf could not co-ordinate and optimise its production process in advance but would have to wait for each individual order put by the parents up to the total capacity which they are entitled to use. Consequently, no standardisation with respect to the alloys, routing or other production processes would be possible, due to the fact that no forecast business plan could be established. Ultimately, this would harm only VAW, as APA's relative dependence on Norf would be reduced after the merger owing to the other rolling mills that the merging partner would bring together.

Overall, the clearest undertaking would be the disposal of Alcan's 50% stake in Norf. This, however, appeared to be a difficult task for Alcan and eventually led the Commission to consider a prohibition decision. Prior to its adoption, Alcan and Pechiney decided to put an end to their merger plans and formally withdrew their notification.

### **5. The product market definition and the competitive assessment in Alcoa/Reynolds**

The last of the aluminium mergers the Commission had to decide on was the merger between U.S. aluminium producers Alcoa and Reynolds.

This case raised interesting issues in terms of both product market definition and competitive assessment of mergers. These issues were raised in the analysis of the smelter-grade alumina market.

Smelter-grade alumina (SGA) is a raw material to produce primary aluminium. It is a white powder that comes out of the refining process of bauxite. SGA is then smelted into aluminium metal, through an electrolysis process that takes place in aluminium smelters.

The Commission found that some of the aluminium producers in the world, such as the parties to the merger, are integrated vertically, from bauxite mining, alumina refining and aluminium smelting, to the production of FRPs and other finished aluminium products. The vertical integration in this industry suggested that there are two types of demand for SGA: a captive demand (i.e., alumina consumed internally by integrated firms) and a merchant demand (i.e., surplus alumina that is not used internally by integrated firms and which is made available for sales to third, non-integrated, parties). Three-quarters of total alumina production is used captively. The Commission conducted a detailed investigation to check whether such 'captive' alumina could be diverted to the 'merchant' market, in case of a 5% to 10% increase in the price of 'merchant' alumina. The results of the investigation



suggested that this would not be the case, notably because of the huge economic penalty that integrated aluminium producers would incur by reducing the level of SGA supplies to their own smelters. Based on its calculations, the Commission found that the opportunity cost of unutilised smelter capacity would be higher than any possible profits stemming from a diversion of 'captive' SGA to third-party sales. As a consequence, the Commission considered that since 'captive' SGA is out of the scope of the 'market', it could not influence competition in the market for the sales of SGA to third parties and, therefore, decided to exclude it from the relevant product market. The latter would comprise only merchant SGA, that is alumina which is indeed the object of sales and therefore of price negotiation. It is in this area that the Commission decided to investigate the effects of the merger.

The Commission then examined the conditions under which SGA 'merchant' sales are made. Supplies of SGA to third parties are made either through long-term contracts (usually ranging from 5-10 years) or through spot sales (contracts than run for less than a year). The former are motivated by the desire of smelters to ensure in advance a satisfactory level of SGA supply over a long period of time. The latter are sales made mainly to Russian, CIS and Chinese smelters, as well as to other smelters that may run into

temporary shortage of raw material. Quite importantly, the spot sales are made at a certain price, which reflect the conditions of supply and demand in the SGA market. The shortest the SGA market, the higher the spot price, and vice-versa. As a consequence, the spot market was often used as a reference price for the negotiation (or re-negotiation) of long-term contracts and as a reliable indicator of supply and demand equilibrium.

One could argue that, since the Commission excluded from the relevant product market 'captive' SGA sales, on the basis that these cannot influence the competitive conditions on the free market, it should also exclude from the relevant product market long-term contracts of 'merchant' SGA, since future SGA production committed under long-term contracts will not become available for sales to the free market for a long period of time. This argument could be true, if long-term contracts contained a fixed-price mechanism. However, the great majority of long-term contracts featured a price range, which allowed their counterparts to re-negotiate them throughout their duration.<sup>11</sup> The

price range is a percentage of the daily aluminium LME quotation (e.g., 11% to 14% of LME). Such contracts include a put-call clause and the seller or the buyer may exercise their option according to the LME price, their own financial position and, most importantly, according to the conditions of supply and demand in the SGA market (i.e., long or short market). This price flexibility, built into such long-term contracts, led the Commission to consider that there is still scope to exercise market power throughout the duration of such contracts.

The existence of the spot sales, as an indicator of the competitive situation in SGA, was one of the most important features of the Commission's analysis of the merger. The Commission found that the spot price was very sensitive to SGA output variations and that a small cutback in SGA production could heavily influence the spot prices and, ultimately, the put/call mechanics built into the long-term contracts.<sup>12</sup> The next task was, therefore, to examine whether the merged firm would have, as a result of the merger, the possibility of unilaterally provoking variations in SGA

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quantity in its calculation of the relevant product market.

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<sup>11</sup> The Commission identified one long-term contract which featured a fixed-price with up-front payment. The quantity of SGA concerned was obviously out of the scope of competition in this market. As a consequence, the Commission did not include the corresponding SGA

<sup>12</sup> This conclusion was also supported by a real-life experiment: an explosion in an alumina refinery in the U.S.A., in July 1999, reduced the amount of world-wide SGA output by 2%, which in turn led to an immediate increase in the spot price of 34%.



output, thus exercising market power in the negotiation or re-negotiation of long-term contracts.

The merger would bring together a series of alumina refineries belonging to Alcoa and Reynolds. The most important element in this respect was that the merger would bring under the control of the merged firm alumina refineries located in the lowest end of the alumina cost curve.<sup>13</sup> Moreover, Reynolds would bring in a refinery located at the highest end of the cost curve. The Commission was, therefore, led to examine whether the control of the top and bottom ends of the alumina cost curve by the merged firm - which would also become the largest SGA producer world-wide - would confer it the ability to control the economics of the market, notably through the possibility to deter entry or expansion by competing alumina refineries.

According to the base-load facility theory, the control of low-cost plants would confer the ability to bring spot prices down, through capacity or output expansions, whereas according to the swing-facility theory, the control of high-cost plants would confer the ability to raise prices through shut-downs. These two theories featured in the

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<sup>13</sup> The four refineries located in the Darling Range, a geographic area in Australia, where Alcoa controlled three and Reynolds one refinery, respectively

Commission's analysis, which concluded that the merged firm could, by a mere announcement that it will increase or decrease its SGA output, influence the spot prices and therefore the long-term contacts mechanics. As a result, the merged firm could 'regulate' the entry or expansion of competing SGA producers. For instance, each time a competitor intended to increase capacity, the merged firm could announce an increase in its output. This would be a credible threat, since by controlling the base-load facilities, the merged firm could expand its capacities at a very low cost. This would, in turn, bring the SGA spot price down, and as a result it would affect the net present value of the planned investment of rival firms. Ultimately, the lower return on investment would discourage or at least postpone the rivals' planned expansions.

Inversely, by controlling the swing facilities, the merged firm would have the ability to raise SGA prices independently of its competitors or customers, by temporarily closing them down. From a corporate finance point of view, such a temporary shut-down of high-cost refineries could only be profitable to the merged firm, since on top of the benefit of idling a low-margin or unprofitable plant, this would also ensure increased margins at the level of the low-cost facilities. However, most importantly, the increase in the SGA spot prices would benefit the merged firm in relation to the

price negotiation (or re-negotiation) of long-term SGA supplies, of which it controlled the largest part world-wide.

On the basis of the above, the Commission concluded that the acquisition of Reynolds by Alcoa would confer upon the merged firm the ability to exercise market power in the merchant market for SGA. In order to alleviate these concerns, the parties agreed to divest the two critical refineries that Reynolds would contribute to the merger, namely, the low-cost Worsley refinery in the Darling Range (Australia) and the high-cost refinery in Sherwin, Texas (USA). This remedy removed completely the overlap in the SGA market and restored the competitive conditions prevailing before the merger.

It would be unfair not to mention that this successful merger review and remedial action was conducted by DG COMP's Merger Task Force in close co-operation with the Antitrust Division of the U.S. Department of Justice. The intensity of the co-operation, which the merging parties welcomed and assisted by providing relevant waivers for the exchange of information, should serve as an excellent example of the way in which foreign antitrust agencies will have to co-operate in the framework of the growing globalisation of the economy.



## **Horizontal agreements on energy efficiency of appliances : a comparison between CECED and CEMEP**

By Manuel MARTÍNEZ-LÓPEZ, DG COMP-F-1

On 15 Mai 2000, the Competition Directorate-General closed its examination of an agreement concluded under the aegis of the European Committee of Manufacturers of Electrical Machines and Power Electronics (CEMEP) and notified between January and April 2000 by some of the participants<sup>14</sup>. In general, the agreement aims at improving the energy efficiency of the products manufactured and sold by the parties. The examination revealed that the agreement was not capable of appreciably restricting competition and the parties have been informed accordingly through an administrative letter<sup>15</sup>.

The CEMEP agreement aims at gearing the EU market towards higher efficiency motors thereby saving energy in their operation. These environmental objectives are similar to those of an agreement regarding domestic washing machines notified by CECED and ultimately

exempted by the Commission<sup>16</sup>. However similar the objectives, the Commission concluded that the CECED agreement was caught by the prohibition of Article 81, paragraph 1, though fulfilling the conditions for an exemption. A comparison between both cases illustrates therefore how the restrictions by which a similar environmental objective is attained are determinant in the assessment of this type of horizontal agreements under Article 81, paragraph 1.

The CEMEP agreement concerns Standardised low voltage motors ("SLV motors")<sup>17</sup>. SLV motors are widely used for pumps, ventilators and compressors. In addition to monitoring assured by CEMEP, the agreement

consists basically of two commitments:

- (a) By 31.12.2000 at the latest, SLV motors covered by the CEMEP agreement will be classified under efficiency classes 1 (high), 2 or 3 based upon objective criteria. The information on the efficiency class must be made available in catalogues and rating plates using a common logo. Such labelling element was present as well in the CECED agreement, which was however based on existing EC labelling of washing machines pursuant to Commission directive (EC) 95/12/CE<sup>18</sup>.
- (b) Taking 1998 and 1999 as reference years for, respectively, 4-pole and 2-pole SLV motors under class 3, the parties commit themselves to jointly reducing by at least 50% their joint sales of efficiency class 3 SLV motors in the EC by 31.12.2003. A joint target is also set forth in the CECED agreement, though defined differently, i.e. a weighted average of energy efficiency for all the products sold (0.24 kWh/Kg load)<sup>19</sup>.

<sup>16</sup> Commission decision of 24.1.2000 (not yet published). EC Competition Policy Newsletter, February 2000, p.13.

<sup>17</sup> Motors covered by the CEMEP agreement are defined as totally enclosed, fan ventilated, three phase A.C. squirrel cage induction motors ranging from 1.1 to 90 kW with 2 or 4 poles, rated for 400 V-line, 50 Hz, S1 duty class in standard design.

<sup>18</sup> OJ L 136 of 21.6.1995, p. 1.

<sup>19</sup> The technical definition is interchangeable in practical terms: changes in the composition of joint sales under various energy-efficiency categories, result in a new weighted average efficiency and a

<sup>14</sup> OJ C 74 of 15.3.2000, p.5.

<sup>15</sup> IP/00/508 of 23.5.2000.



Unlike CECED, parties to the CEMEP agreement enjoy considerable discretion as to how they contribute to the attainment of the joint target.

The parties to the CEMEP agreement hold a major proportion (80%) of the EC market, like CECED's (95%). In both agreements, future participation by non-members is unrestricted. Both agreements affect mainly the composition of output, not the total amount of such output. However, the achievement of the CECED target results mainly from individual obligations placed on the parties as to their production and sales of different energy classes. As a matter of fact, the Commission singled out in its CECED decision the individual commitment not to manufacture or import machines pertaining to certain energy-efficiency classes as having as its object the restriction of competition, also in regard, notably, to the parties' market share, the non negligible share of output directly concerned, likely price increases in the short run and the importance of the energy-efficiency class as a product attribute in the market concerned. In other words, competition actually takes place on energy-efficiency to a non-negligible extent and the CECED agreement provides

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new weighted average efficiency is necessarily brought about by changes in such composition, *ceteris paribus*.

each party with the certainty that competitors will not meet demand for lower efficiency machines.

Parties to the CEMEP agreement notified to the Commission are not bound by similar commitments as to their individual behaviour in the market regarding production and sales. Beside the scope of the provisions, their economic context is also different. There is no widely established definition of energy efficiency of SLVs present in the market and, accordingly, competition does not appreciably take place on this product characteristic. CEMEP actually makes visible a product attribute which allows for product differentiation. In contrast, the definition and labelling of energy-efficient washing machines was already clearly established and often stressed in advertising when the CECED agreement was entered into. The magnitude of parties' production subject to technical upgrading in CEMEP is 2.5 times higher than in CECED, since class 3 SLV motors currently account for 70% of total EC sales. However, the range of price increases which could be expected from such upgrading is considerably lower. SLV motors are furthermore purchased by industrial users. Moreover, third party production and imports not subject to the agreement, which could act as a competitive constraint, play a greater role in the SLV market than in that for washing machines.

In view of the foregoing and consistent with the assessment that the agreement could be granted negative clearance, it is not necessary to examine whether the conditions of Article 81, paragraph 3 are fulfilled and, in particular, whether the CEMEP agreement contributes to technical and economic progress and whether a fair share of the benefits resulting from improved environmental conditions accrue to consumers. Both this conclusion and the analysis in this case are fully in line with similar cases dealt with in recent past<sup>20</sup>.

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<sup>20</sup> See cases COMP/37.231 ACEA (IP 98/865 of 16.10.1998), 37.634 JAMA and 37.612 KAMA (IP 99/922 1.12.1999).



## The Grand Alliance

By Eric FITZGERALD, COMP-D-2

On 30 March 2000, the Commission, applying Article 7 of Regulation 870/95,<sup>21</sup> decided not to oppose exemption of the Grand Alliance consortium agreement. This decision was the last decision to be taken under Regulation 870, bringing the total number of exemptions granted under that regulation to eleven. The block exemption provided for in Regulation 870 has subsequently been renewed by Regulation No 823/2000,<sup>22</sup> with minor amendments, for a further period of five years. In accordance with the transitional arrangements provided for in Regulation 823, the Grand Alliance will benefit from exemption for the life of that Regulation; i.e. until April 2005. The Grand Alliance consortium comprises the carriers Hapag-Lloyd Container Linie GmbH, Malaysia International Shipping Corporation BHD (MISC), Nippon Yusen Kaisha (NYK), Orient Overseas Container Line Limited (OOCL) and P&O Nedlloyd. Although the Grand Alliance operates joint liner shipping services on several major trade lanes, exemption was sought only for the

consortium's service between ports in Northern and Southern Europe and ports in the Far East.

All Grand Alliance lines operate within the Far Eastern Freight Conference (FEFC) on the Far East trades. Article 6(1) of Regulation 870 provided that a consortium operating within a conference, in order to benefit automatically from exemption, must possess a share of the direct trade between the range of ports it serves of less than 30%.<sup>23</sup> As the Grand Alliance exceeded this threshold,<sup>24</sup> it applied for exemption under the simplified opposition procedure provided for in Article 7 of the Regulation. Under this procedure, which has been maintained, with minor amendments, in Regulation 823, a consortium with a trade share<sup>25</sup> exceeding the above threshold but below 50%, will be deemed exempt unless the Commission raises objections within six months of notification.

With regard to the Grand Alliance notification, one element gave the Commission

some cause for concern. The FEFC lines together have a significant share of the total volume carried by container vessel on the Far East trades. While independent lines certainly offer some competition to the conference lines, it is not as strong as that provided by independents on most other major trades. This, together with the fact that individual service contracts – which provide some assurance of competition between carriers – are not a feature of the Far East trades, led the Commission to request the Grand Alliance to supplement its notification with further and more detailed evidence of effective competition.<sup>26</sup>

Following an extended examination, the Commission was finally satisfied that the members of the consortium are, and will remain, subject to effective competition. Evidence was provided, *inter alia*, of frequent switching by shippers both as between the members of the Grand Alliance and as between these lines and other lines. The lines were also able to provide proof of considerable fluctuation of the market shares of the individual Grand Alliance lines over a relatively short time-span. Both of these elements indicate that there is substantial competition on service, if not

<sup>21</sup> Commission Regulation 870/95 of 20 April 1995 – OJ No L89 of 21.4.95, p. 7.

<sup>22</sup> Commission Regulation (EC) No 823/2000 of 19 April 2000 – OJ 20 April 2000.

<sup>23</sup> In Regulation 823, the words 'trade' and 'trade share' have been replaced by 'market' and 'market share'.

<sup>24</sup> The exact figure is confidential.

<sup>25</sup> Amended to 'market share' in Regulation 823.

<sup>26</sup> It is a condition of exemption that the consortium members are subject to actual or potential effective competition, either on price or service or both (Article 5 of Regulations 870 and 823).





price, between the consortium members and between these lines and outsiders (other conference lines and independents).

As the consortium clearly fulfilled all other conditions for exemption set out in Regulation 870/95, the Commission

accordingly decided not to oppose exemption.

## Plaintes contre des droits exclusifs en matière de jeux de hasard rejetées

*Par Maija LAURILA, DG COMP-D-3*

Le 21 mars 2000, dans le cadre des procédures d'infractions présumées, la Commission a décidé de suivre les propositions de la DG Concurrence et de classer cinq plaintes alléguant des infractions notamment aux règles de concurrence par certains Etats membres (Autriche, Grèce) en matière de la réglementation des jeux de hasard.

Ces décisions étaient motivées notamment par les principes découlants de la jurisprudence assez récente de la Cour de justice (voir arrêts du 21 septembre 1999 dans l'affaire C-124/97 *Läärä* concernant des machines à sous et du 21 octobre 1999 dans l'affaire C-67/98 *Zenatti* concernant la collecte de paris). Selon cette jurisprudence, les Etats membres jouissent d'une large marge d'appréciation quant à l'organisation des activités dans ce secteur et quant à la protection qu'ils souhaitent accorder aux citoyens. En effet, selon la Cour, une autorisation

limitée de ces jeux dans un cadre exclusif, qui présente l'avantage de canaliser l'envie de jouer et l'exploitation des jeux dans un circuit contrôlé, de prévenir les risques d'une telle exploitation à des fins frauduleuses et criminelles et d'utiliser les bénéfices qui en découlent à des fins d'utilité publique, s'inscrit dans la poursuite des objectifs d'intérêt public. En outre, la question de savoir s'il est préférable, plutôt que d'octroyer un droit exclusif d'exploitation à un organisme, d'adopter une réglementation imposant aux opérateurs intéressés les prescriptions nécessaires, relève du pouvoir d'appréciation des Etats membres, sous réserve que le choix retenu n'apparaisse pas disproportionné au regard du but recherché.

Cette jurisprudence concerne certes l'interprétation des règles du marché intérieur et plus précisément de la libre prestation des services et non des règles de concurrence. Néanmoins, la

Commission doit en tenir compte en appréciant une plainte alléguant une violation des règles de concurrence communautaires du fait de la même législation nationale. Comme la Cour a en principe admis une limitation de l'offre des jeux de hasard dans l'intérêt public ainsi que l'existence d'un droit exclusif dans le but de contrôle, la Commission ne peut considérer que les règles de concurrence s'opposent à de telles circonstances. En l'absence d'un abus identifiable d'une position dominante et de toute autre violation entraînée par les droits spéciaux ou exclusifs en question, la Commission ne pouvait donner suite aux plaintes susvisées.

Toute personne souhaitant présenter une plainte à la Commission en cette matière est désormais invitée à mettre en évidence l'abus de la position dominante dans le chef de l'entreprise détenant le droit exclusif ou spécial, faute de quoi sa plainte est susceptible d'être classée sans suite.



## THE COMMISSION'S ASSESSMENT OF THE EUROVISION SYSTEM PURSUANT TO ARTICLE 81 EC

Andrés FONT GALARZA, DG COMP-C-2

### I – INTRODUCTION

The Commission exempted on 10 May 2000 the Eurovision system from 1993 until 2005. This is a new significant episode in the long and complicated history of the Commission's assessment of the Eurovision system pursuant to article 81 EC which has been marked by the conflicting interests of European public and commercial broadcasters and the 1996 Court of First Instance's annulment of the Commission's decision which exempted the Eurovision system.

This article intends to give an overview of the Commission's reasoning behind the just granted exemption. The interpretation and the legal implications of the above-mentioned ruling of the Court of First Instance are not addressed in this article.

### II CHRONOLOGY/BACKGROUND

The European Broadcasting Union (EBU) is an association of radio and television organisations which in particular co-ordinate television programme exchanges among its active members. In addition, in

the framework of Eurovision, EBU active members participate in the joint acquisition and sharing of sport rights. The EBU has 68 active members in 49 countries situated in the European broadcasting area and 50 associate members in 30 countries outside the area. The EBU members are the main European public broadcasters.

On 3 April 1989 the European Broadcasting Union ("EBU") applied for negative clearance or for exemption pursuant to Article 81(3) of the EC Treaty for the Eurovision system.

On 11 June 1993 the Commission adopted a decision pursuant to Article 81(3) EC granting a conditional exemption until 25 February 1998 to the notified EBU's provisions. The exemption was subject to a sub-licensing scheme of the EBU to third parties of the jointly acquired television rights to sport events.

On 11 July 1996 the CFI annulled the Commission decision following an appeal by a number of European television channels<sup>27</sup>.

The EBU appealed the CFI's ruling before the Court of Justice but withdrew it in May 2000. Therefore, the annulment of the Commission decision stands.

On 1<sup>st</sup> September 1999<sup>28</sup> the Commission published an Article 19(3) Notice showing its intention to exempt the Eurovision system.

On 10 May 2000 the Commission adopted a decision exempting the Eurovision system pursuant to Article 81(3) from 1993 until 2005<sup>29</sup>.

### III THE NOTIFIED ARRANGEMENTS : THE EUROVISION SYSTEM

The notified arrangements are the so-called "Eurovision system", that is, the rules which govern within the EBU and the Eurovision/Sports system: (1) the joint acquisition of television sports rights (2) the sharing of jointly acquired television sports rights (3) the exchange of the signal for sport events (4) the access scheme for non EBU members to Eurovision sports rights (5) The sub-licensing rules relating to exploitation of Eurovision rights on pay-TV channels.

Gestevisión Telecinco SA and Antena 3 de Televisión v Commission of the European Communities, joint cases T-528/93, T-542/93, T-543/93 and T-546/93, European Court Reports 1996, p. II-0649.

<sup>28</sup> OJ C 248/4, 1.9.99.

<sup>29</sup> Not yet published.

<sup>27</sup> Metropole Télévision SA and Reti Televisive Italiane SpA and



The parties made some changes to the notified arrangements. These changes, which are part of the notified Eurovision system, are the 1993 and the 1999 access schemes for non-members.

### **1. The access scheme for non EBU members to Eurovision sports rights (1993)**

Under the scheme submitted to the Commission on 26 February 1993, the EBU and its members undertake to grant non-member broadcasters extensive access to Eurovision sports programmes for which the rights have been acquired on an exclusive basis through collective negotiations. The 1993 scheme grants live and deferred transmission rights to third parties of jointly acquired Eurovision sports rights. In particular the non-EBU members have significant access to the unused rights, i.e. for the transmission of sport events for which an EBU member does not transmit any part or only a minor part of the sports event. The terms and conditions of access are freely negotiated between the EBU (for trans-national channels), or the member(s) in the country concerned (for national channels), and the non-member. However, the EBU and its members will in no circumstances grant less favourable access than is stipulated in these sublicensing rules.

### **2. The sublicensing rules relating to exploitation of Eurovision rights on pay-TV channels (1999)**

As an addition to the general rules on EBU non-members' access to Eurovision Sport Programmes adopted on 24.02.1993, the EBU adopted and submitted to the Commission on 26.03.1999 a set of sublicensing rules relating to exploitation of Eurovision rights on pay-TV channels.

Pursuant to the 1999 set of rules when an EBU member transmits part of a sports event on its national general programme channel and part on its pay-TV channel:

- A non-EBU member has all rights stemming from the 1993 rules for the broadcasting on its free-to-air or pay-TV channels, live or deferred. In addition;
- A non-EBU member has the right to transmit on its pay-TV channel identical or comparable competitions to those presented on the EBU member's pay-TV channel.

The introduction of those 1999 rules on pay TV by the EBU was the necessary consequence of the evolution of the European television market which led the EBU members to enter the thematic channels' segment. Digital technology offers the technical potential for more and more such channels, and the large majority (if not the totality) of such further channels will certainly be both thematic (in

terms of programming) and pay TV (in terms of financing). Therefore, in the late 1990s when the possibilities for technical delivery were exploding and as a consequence, a multitude of different channels were on offer and audiences became more and more fragmented, the EBU members had to adapt and to diversify their programming offer accordingly with thematic channels. In this context, the 1999 access scheme became necessary in order to ensure that the joint acquisition origin of the EBU's rights would not unfairly place other pay-TV competitors in disadvantage.

The complete text of the sublicensing rules have been published by the EBU on internet: <http://www.ebu.ch> and it is annexed to the Commission decision. It is also important to note that the EBU and its members can grant more favourable access than that stipulated in the sublicensing rules.

## **IV THE RELEVANT MARKET**

### **1. Product market**

The EBU considered that the market relevant for the assessment of the case is the market for the acquisition of television rights to important sporting events in all disciplines of sport, irrespective of the national or international character of the event. The EBU is only active in the acquisition

of television rights to sports events of a pan-European interest<sup>30</sup>.

The Commission decided that the market definition proposed by the EBU was too wide and that there is a strong likelihood that there are separate markets for the acquisition of some major sport events, most of them international. The Commission's assessment in this market definition issue is particularly interesting as a precedent for future cases in the TV sports rights domain. The Commission applies the substitutability test as set out in its Commission Notice on the definition of relevant market for the purposes of Community competition law<sup>31</sup>.

The Commission started by saying that sports programmes have particular characteristics; they are able to achieve high viewing figures and reach an identifiable audience, which is a special target for certain important advertisers.

However, the Commission finds that the attraction of sports programmes and hence the level of competition for the television rights varies according to the type of sport and the type of event. Mass sports like football,

tennis or motor-racing generally attract large audiences, the preferences varying from country to country. By contrast, minority sports achieve very low ratings. International events tend to be more attractive for the audience in a given country than national ones, provided the national team or a national champion is involved, while international events in which no national champion or team is participating can often be of little interest. In the last ten years, with increased competition in the television markets, the prices for television rights to sport events have increased considerably. This is particularly true with regard to outstanding international events such as the Football World Cup or the Olympic Games.

The preferences of viewers determine the value of a program to advertisers and pay TV broadcasters<sup>32</sup>. In free to air television we cannot directly observe viewers' reactions to changes in the price of broadcasts, and hence we cannot directly observe evidence on the price elasticities of demand. This is also true for pay-TV since pay-TV contracts usually involve monthly or annual

payments for bundles of channels, but not individual prices for each program. However, if we observe that sports broadcasts achieve the same or similar sized audiences whether or not they are competing with simultaneously broadcast sports events, there is strong evidence that these events could determine the subscribers or advertisers' choice of a certain broadcaster.

Indeed, data on viewer behaviour, among major sporting events, shows that for at least some sporting events which have been analysed such as the Summer Olympics, the Winter Olympics, the Wimbledon Finals and the Football World Cup viewing behaviour does not appear to be influenced by the coincidence of other major sports events being broadcast simultaneously, or nearly simultaneously. That is, viewing figures for the major sports events appear to be largely independent of whatever other major sports are broadcast near in time to them<sup>33</sup>. Therefore, the

<sup>30</sup> Sport events of a pan-European interest include for example; The Olympic Games, the Football World Cup, the European football Championships; the World and European Athletic Championships; Wimbledon, the US and French tennis Opens; the NBA basketball.

<sup>31</sup> (97/C 372/03)

<sup>32</sup> The same that the customers substitutability determine the upstream market of the supply of digital interactive television services by service providers to content providers as the Commission has decided in its decision of 15 September 1999 – case 36.539 – British Interactive Broadcasting/ Open, OJ L 312, 6 December 1999.

<sup>33</sup> When major sport event A is broadcast simultaneously with another major sport event B, event A achieves (on average) the same audience as it does when event B is not available. For instance, there is evidence that the elasticity of demand in the UK for the Wimbledon Finals with respect to the World Cup Football is very small, and probably zero. World Cup Football viewers do not appear to watch Wimbledon Finals, even when the World Cup is not available. The same can be said with regard to the Premier League



offer of such sport events could influence the subscribers or advertisers to such an extent that the broadcaster would be inclined to pay much higher prices.

However, the Commission did not find it necessary for the purposes of this case to exactly define the relevant product markets. Taking into account the present structure of the market and the sublicensing sets of rules granting access to non-EBU members to the Eurovision Sports Programmes, the Commission considered that these agreements do not raise competition concerns, even on the basis of markets for the acquisition of particular sport events such as the Summer Olympics.

## **2. Geographic market**

The Commission did not find necessary for the purposes of this case to exactly define the relevant geographic market. Taking into account the present structure of the market and the sublicensing sets of rules granting access to non-EBU

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Football broadcast by BSkyB in relation with the top-30/40 most viewed sport programs in free-to-air TV in the UK. The test indicates that viewers of Premier League matches do not substitute to other major sports events when broadcast on the same day. Source : "Market definition in European Sports Broadcasting and Competition for Sports Broadcasting Rights" by Market Analysis LTD, a study for Competition DG of the European Commission, October 1999.

members to the Eurovision Sport Programmes the agreements did not raise competition concerns even on the basis of national markets for the acquisition of sports rights as well as for the downstream markets of free-to-air and pay-TV broadcasting.

## **V MARKET STRUCTURE**

As a result of the new entrants and the increased capacity devoted to sports broadcasts, there are fierce bidding contests to obtain valuable sports broadcasting rights. The effect of that seems to be a transferring of profits away from downstream broadcasters and towards upstream rights owners. The prices of sporting events TV rights have therefore increased sharply.

In this context, the EBU has significantly lost market share in the relevant markets for the last ten years. This is the most relevant fact underlying the Commission's exemption decision.

The new market structure confirms that digitisation and the convergence process can in principle be a factor which increases competition in the absence of "technical or content" bottlenecks which could foreclose the new emerging markets. The new capacity leads to the entrance of new competitors in the market. New competitors should bring more competition in the TV sports market under normal market circumstances.

## **VI THE COMMISSION'S ASSESSMENT**

The decision concludes that the notified arrangements fall within the scope of Article 81(1) EC, but that subject to the conditions and obligations in the decision and following the changes made as a result of the Commission's intervention, the criteria of Article 81(3) EC are met.

### **1. ARTICLE 81(1) EC**

#### **1.1 Restriction of competition between the EBU members as a result of the notified agreements**

The EBU rules governing the joint acquisition and sharing of television rights to sport events and the use of the Eurovision signal have as their object and effect the restriction of competition between the members.

#### **1.2. The joint acquisition of rights**

As a result of the EBU statutes (Article 13(4)) and from the nature of Eurovision as a solidarity system, the EBU members bind themselves to jointly acquire television rights to sport events. Therefore, the joint acquisition of rights within the framework of Eurovision restricts and, in many cases, eliminates competition between the participants in the Eurovision system. Instead of bidding against each other, members participate in joint negotiations and agree among themselves the

financial and other conditions for the acquisition of the rights.

### **1.3 The sharing of the Eurovision rights**

The Eurovision rights are shared between the EBU members participating in the joint acquisition of the rights for a specific sports event. All members participating in the agreement are entitled to the full benefit of the rights regardless of the territorial scope of their activity and regardless of their technical means of broadcasting. However, members who compete for the same national audience (several members in one country or members broadcasting from their country into the country of another member in the same language) have to agree among themselves on the procedure for attributing a priority to one of them.

### **1.4 The exchange of the Eurovision signal**

For events which take place within the Eurovision area the coverage (television signal consisting of basic video and international sound-feed) is produced by a member in the country concerned and is available to all other members via the Eurovision programme exchange system. The Eurovision programme exchange system is based on reciprocity : whenever one of the participating members covers an event, in particular a sports event, which takes place on its own national territory and is of

potential interest to other Eurovision members, it offers its coverage free of charge to all the other Eurovision members on the understanding that in return it will receive corresponding offers from all the other members in respect of events taking place in their respective countries. The originating member also provides the necessary infrastructure to other interested members such as commentary positions, etc.

## **2. ARTICLE 81(3) EC**

All conditions pursuant to Article 81(3) EC are met in the Commission's view. The Eurovision systems improves distribution and the coverage of the relevant sport events in the benefit of the European viewers. The restrictions are indispensable to attain that objective. In addition, the EBU has modified the notified agreements to include a set of sublicensing rules which make sure that non-EBU members have extensive access to the Eurovision sport rights. This counterbalances the restrictive effects of the joint acquisition of the sport rights. The schemes will provide extensive live and deferred transmission access for non-members on reasonable terms.

## **3. CONDITIONS AND OBLIGATIONS**

The Commission imposed basically the same conditions and obligations upon the EBU as those in its 1993 decision to

ensure a proper functioning of the access schemes for non EBU members of the relevant Eurovision sports rights.

### **3.1 Conditions**

In order to ensure contractual access for third parties to the television rights to sports events acquired within the framework of Eurovision such contractual access must be allowed under the agreements with the rights owners (sport organisers or rights agents). It is therefore a condition for the exemption that the EBU and its members finalise only agreements which allow the EBU and its members to grant access to third parties in accordance with the access scheme for non EBU members to Eurovision sport rights and the sublicensing rules relating to the exploitation of Eurovision rights on pay-TV channels or, subject to the approval of the EBU, on more favourable conditions.

### **3.2 Obligations**

In order to assist the Commission during the exemption period in checking whether the rules on contractual access for non EBU members to Eurovision sport rights and the sublicensing rules relating to the exploitation of Eurovision rights on pay-TV channels are applied in an appropriate, reasonable and non-discriminatory way, the EBU must be under the obligation to inform the Commission of all amendments and additions to the access



## ➤ ARTICLES

schemes and of all arbitration procedures concerning disputes under the access schemes.

### **VII - CONCLUSION**

Irrespective of the legal debate which followed the 1993 Commission decision and the consequent annulment by the

ruling of the CFI in 1996, the new Commission exemption of the Eurovision system constitutes an important precedent in the domain of product market definition for TV sports rights and clarifies the Commission's policy with regard to the assessment of joint buying arrangements of

exclusive rights. The Commission's exemption of the Eurovision system is consistent with a market structure in which the EBU members have significantly lost market share in Europe in the last years as a result of increased competition from other powerful commercial broadcasters.



# OPINION AND COMMENTS

In this section DG COMP 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 COMP's views.

## Le dégroupage de la boucle locale : un pas de plus dans la libéralisation des télécommunications. Exemple de complémentarité entre la régulation sectorielle et les règles de concurrence du Traité

Par Christophe de LA ROCHEFORDIERE,  
DG Comp-C-1

La Commission a adopté le 26 avril 2000 une Recommandation aux Etats Membres et une Communication sur le « dégroupage de la boucle locale » des réseaux de télécommunications des opérateurs historiques<sup>34</sup>. Derrière cette terminologie absconse (en anglais « *local loop unbundling* ») se cache l'un des principaux enjeux de concurrence dans le secteur des télécommunications, à savoir le manque – voire l'absence - de concurrence sur les terminaisons de réseaux des opérateurs historiques, qui permet à ceux-ci, malgré la libéralisation de la téléphonie vocale<sup>35</sup> depuis le 1er janvier 1998, de garder des parts de marchés hégémoniques, dans bien des cas proches de 100%, sur les marchés d'appels locaux et de services d'accès aux abonnés. L'accès à la boucle locale est devenu un nouvel enjeu avec le développement

d'Internet : les communications permettant aux utilisateurs d'avoir accès à leur serveur Internet sont des communications locales et doivent donc habituellement être acheminées par la boucle locale des opérateurs historiques. Pour cette raison, afin de favoriser la concurrence dans les communications et le développement d'Internet, la Commission, suivant en cela les conclusions du Conseil européen de Lisbonne<sup>36</sup>, a recommandé aux Etats Membres de mettre en oeuvre d'ici la fin de l'an 2000 le dégroupage de la boucle locale. Plusieurs Etats membres ont d'ailleurs déjà rendu obligatoire le dégroupage ou fixé formellement des dates à cette fin (Autriche, Danemark, Finlande, Allemagne, Italie, Pays-Bas, Royaume-Uni).

### Les caractéristiques de la boucle locale. Situation concurrentielle.

La boucle locale, que la langue anglaise désigne aussi bien par

*local loop* ou *last mile*, est la terminaison de réseau des opérateurs télécom reliant leur dernier répartiteur aux abonnés du réseau. Cette boucle locale est, sauf exception, pour chaque ligne composée d'une paire de fils de cuivre. Sur cette paire de cuivre transitent des communications en mode numérique ou analogique, sur des fréquences hertziennes permettant d'acheminer de la voix et des données, mais ayant normalement une capacité insuffisante pour acheminer rapidement des images ou des volumes importants d'information (la capacité disponible avec les technologies téléphoniques traditionnelles est inférieure à 50 kbits/s).

Le contrôle de cette infrastructure, qui est un réseau de distribution de détail de services téléphoniques aux particuliers, s'avère actuellement déterminant dans la concurrence que livrent les opérateurs existants aux nouveaux entrants pour le maintien de leurs parts de marché. Certes, depuis le 1er janvier 1998, compte tenu des obligations des Directives « téléphonie vocale » et « interconnexion »<sup>37</sup>, les opérateurs historiques doivent accorder l'interconnexion et la sélection d'appels à leurs nouveaux concurrents. L'option de présélection d'opérateur est

<sup>34</sup> Non encore publiée. Ces textes sont disponibles sur le site internet de la DG Concurrence, page [http://europa.eu.int/comm/dg04/index\\_en.htm](http://europa.eu.int/comm/dg04/index_en.htm).

<sup>35</sup> Cf. Directive 98/10/CE.

<sup>36</sup> Voir <http://www.ispo.cec.be/europe-initiative.htm>

<sup>37</sup> Cf. Directives 98/10/CE et la directive 97/33/CE, amendée par la directive 98/61/CE.



même obligatoire<sup>38</sup> depuis le 1er janvier 2000. Mais comme les nouveaux entrants n'ont en temps normal pas de boucle locale, l'interconnexion, associée à la présélection d'opérateur, ne leur permet habituellement que d'offrir des services sur les communications non locales<sup>39</sup>, que ce soient les communications inter-régionales ou bien internationales.

Dans la directive sur la réalisation de la pleine concurrence sur le marché des télécommunications<sup>40</sup>, la Commission distinguait plusieurs services de téléphonie fixe de détail, à savoir le *raccordement initial*, l'*abonnement mensuel*, les communications *locales*, *régionales* et *internationales*. Il convient naturellement de surveiller attentivement les catégories de services établies de la sorte, en raison notamment de la rapidité des évolutions technologiques, et de les réexaminer régulièrement, au cas par cas ; toutefois, à l'heure

actuelle, ces services ne sont normalement pas substituables les uns aux autres et ils peuvent donc être considérés comme autant de marchés en cause<sup>41</sup>. Un particulier peut grâce à la présélection avoir deux opérateurs : l'un pour les services d'accès (l'opérateur historique), et un autre (un nouvel entrant) pour les appels téléphoniques. Ceci implique que les conséquences concurrentielles du contrôle de la boucle locale par les opérateurs historiques ne soient pas analysées sur l'ensemble agrégé des services de détail, mais sur chaque marché spécifique défini de la sorte.

De plus, un nouveau marché est en voie d'apparition, celui des services de télécommunications à haut débit qui peuvent être fournis sous forme de services DSL (digital subscriber line) par la boucle locale. C'est vers ces nouveaux services que convergent les regards de tous les acteurs et leurs stratégies. Les nouveaux services de type DSL utilisent une autre gamme de fréquences que les services téléphoniques classiques, de sorte que les abonnés, de même qu'ils peuvent recevoir sur leurs transistors radios des émissions en ondes moyennes et en modulation de fréquence, vont sur les mêmes lignes téléphoniques pouvoir simultanément bénéficier de services à bande

étroite – les communications téléphoniques traditionnelles - et de services à large bande, par exemple l'ADSL<sup>42</sup>. La différence est saisissante, le volume d'information pouvant passer par la bande large étant de actuellement de l'ordre de 1 à 10 Mbits pour une ligne desservie en ADSL. Nous faisons de la sorte un saut de trois chiffres dans les capacités de transmission disponibles sur la paire de cuivre, sans qu'il faille changer celle-ci (seuls les modems de terminaison aux deux bouts de la ligne de cuivre doivent être ajoutés, ainsi qu'un séparateur entre les communications à bande étroite et à large bande). L'enjeu est considérable, parce que sur le fil de cuivre pourront désormais circuler non seulement la voix et les données, mais aussi la vidéo. Quand on sait que les images sont beaucoup plus gourmandes en capacités de transmission que la voix et les données, on a là un facteur de véritable explosion du volume de trafic de télécommunications. Le marché des services télécommunications, loin d'être saturé en raison du développement d'Internet, pourrait même connaître une nouvelle jeunesse.

<sup>38</sup> Cf. Directive 97/33/CE, amendée par la directive 98/61/EC

<sup>39</sup> Sauf si la sélection / présélection d'opérateur inclut les communications locales. Cf. Directive 98/61/CE du Parlement Européen et du Conseil 24 septembre 1998 amendant la Directive 97/33/CE (JO L268, 3.10.1998). Début 2000 la plupart des Etats Membres n'avaient pas encore mis en oeuvre les obligations de la directive pour la sélection/présélection des appels locaux.

<sup>40</sup> Directive 96/19/CE, 20e considérant, JO L 74, du 22.3.1996, p.13.

<sup>41</sup> Cf. Communication de la Commission sur la définition du marché en cause, JOCE C273 du 09/12/1997.

<sup>42</sup> L'ADSL-asymmetric digital subscriber line- une variante parmi la famille des services DSL. L'ADSL consiste à faire descendre du réseau vers l'abonné des volumes supérieurs à ceux qui remontent de l'abonné vers le réseau.

*Le caractère indispensable de l'infrastructure*

La Commission note dans sa Communication que la boucle locale est une infrastructure sans l'accès à laquelle, si l'opérateur historique est le seul à fournir le service, aucune concurrence ne pourra apparaître sur les marchés en cause tels qu'elle les définit :

i. les services d'accès aux particuliers, que ce soit pour les services traditionnels à bande étroite (la connexion, l'abonnement mensuel) ou les nouveaux services à large bande ;

ii. le marché des communications locales<sup>43</sup>.

Certes, une concurrence partielle pourra apparaître sur tel réseau câblé existant, telle boucle optique ou telle « boucle radio » (les fréquences de boucles radios - *wireless loops* en Anglais - sont en cours d'attribution dans plusieurs Etats membres), mais habituellement pas au niveau national dans des conditions économiques concurrentielles avec la paire de cuivre. Il apparaît en effet que les réseaux câblés sont dans la plupart des cas des réseaux ne desservant pas la population sur le territoire national tout entier ; de plus, l'introduction des services à large bande sur les réseaux

câblés exige de nouveaux investissements importants. Le câble, à la différence de la paire de cuivre, doit être partagé entre de nombreux utilisateurs, et les technologies de large bande ne sont pas stabilisées à un niveau qui les rendent parfaitement substituables et compétitives avec les technologies DSL sur la paire de cuivre.

La Commission souligne également que la boucle locale est une infrastructure qui ne peut pas être dupliquée à un coût raisonnable et dans des conditions normales de rentabilité.

L'une des raisons ayant conduit la Commission à de telles conclusions est la définition du marché géographique pertinent auquel donne accès cette infrastructure de distribution de services. En effet, les infrastructures des opérateurs historiques ont été construites au niveau national lorsqu'ils étaient en position de monopole. Depuis la libéralisation complète de la téléphonie vocale en 1998, la concurrence se développe au niveau national, les nouveaux opérateurs ayant des licences nationales leur permettant d'offrir des services de détail sur l'ensemble du territoire d'un Etat membre, comme ils le font par exemple pour les communications à longue distance. De sorte que les nouveaux entrants, sauf cas particuliers, visent normalement le marché national, pourvu qu'ils aient accès aux infrastructures de distribution de services leur

permettant de le faire. Il est normalement hors de portée d'un quelconque intervenant, compte tenu du niveau absolu des coûts, de dupliquer l'intégralité de la boucle locale, soit les millions de lignes desservant l'ensemble des abonnés du territoire national, que ce soit avec la technologie existante de la paire de cuivre ou avec des technologies de substitution telles que le câble ou la fibre optique. La Commission note également que les réseaux de boucle locale radio qui font actuellement l'objet d'attribution de fréquences dans plusieurs Etats Membres ne paraissent pas actuellement compétitifs sur l'ensemble du marché et ne permettraient à l'heure actuelle que de cibler des clientèles très spécifiques telles que les PME ou les professionnels. La boucle locale est donc indispensable à la fourniture de services de détail sur les marchés identifiés ci-dessous.

**L'accès et ses conditions**

Ainsi sont remplies les conditions restrictives – caractère indispensable de l'infrastructure pour délivrer le produit/service, impossibilité technique et/ou économique de créer une infrastructure équivalente et absence sans l'accès à l'infrastructure de concurrence sur le(s) marché(s) de référence - qu'a posées la Cour dans l'Arrêt Bronner<sup>44</sup>,

<sup>43</sup> Sauf dès que la sélection et la présélection d'opérateurs incluent également, comme le prévoient les directives communautaires, les appels locaux.

<sup>44</sup> Cf. l'arrêt de la Cour du 26 novembre 1998, Oscar Bronner GmbH & Co. KG contre Mediaprint



pour que l'accès à une infrastructure soit requis en vertu de l'article 82 du Traité. Cette interprétation de la jurisprudence peut apparaître très limitatif, restreignant l'application de la doctrine des « infrastructures essentielles » à un cas particulier, celui où il n'existe pas d'autre concurrence sur le marché tel que défini. En réalité, compte tenu des caractéristiques de la boucle locale, il permet de résoudre la question de l'accès. En effet, si ainsi que l'indique la Communication il existe déjà une forme de concurrence sur la boucle locale de l'opérateur historique, par exemple parce qu'un autre opérateur a déjà obtenu l'accès, alors un refus d'accès peut être traité comme un abus « classique » de position dominante sous forme de discrimination.

Il est par ailleurs à noter que la Commission a considéré dans la Communication une autre forme d'abus en tant que telle, la limitation de la production, des débouchés ou du développement technique au préjudice des consommateurs, et ce indépendamment de la condition précédente. Compte tenu du rôle stratégique de la boucle locale pour le déploiement de nouveaux services à large bande, il apparaît qu'un refus de débouclage aurait inéluctablement cet effet dès lors que le nouvel entrant souhaite

offrir de nouveaux services à haut débit tels que l'ADSL. La Commission, se basant sur l'Article 82, indique de la sorte que doivent être traitées avec une rigueur particulière les infractions se traduisant par un gel du développement de nouveaux produits et services. Le droit de la concurrence permet donc d'accompagner et même d'encourager les mutations dues au changement technologique.

Un refus d'accès à cette infrastructure indispensable est alors un abus de position dominante et une infraction de l'Article 82 du Traité<sup>45</sup> qui pourra selon les cas être traité comme un refus de vente, une discrimination (par exemple entre une filiale de l'opérateur historique et le nouvel entrant) ou la limitation de la production, des débouchés ou du développement technique au préjudice des consommateurs. La Communication de la Commission souligne également que des délais excessifs, des conditions contractuelles discriminatoires pourront être constitutives d'abus de position dominante. D'autres points sensibles devront être réglés par voie réglementaire nationale ou contractuelle et concernent *inter alia* les conditions de co-localisation dans les installations techniques de l'opérateur historique (le nouvel entrant doit par exemple pouvoir installer ses modems ADSL dans les locaux

de l'opérateur dominant), ainsi que la répartition et la bonne fin des obligations de services de maintenance.

L'un des points sensibles qu'aborde également la Recommandation est celui du prix du dégroupage : il est normal que les opérateurs historiques fassent payer un droit d'accès à cette infrastructure, au même titre qu'ils le font lorsqu'ils accordent l'interconnexion sur leur réseau. Puisque les directives communautaires prévoient que les tarifs des opérateurs historiques doivent être alignés sur leurs coûts, la question est de savoir quels sont ces coûts et leurs méthodes d'évaluation. Un consensus émerge dans les pays tels que les Etats Unis qui ont initié le dégroupage de la boucle locale en 1996 sur le fait que ces coûts doivent être non pas des coûts historiques des ex-monopoles (largement amortis et désormais sans signification économique) mais les coûts incrémentaux à long terme<sup>46</sup> qu'encourent les opérateurs sur leur réseau. Dans sa Recommandation la Commission n'a pas pris de façon tranchée position sur la

Zeitungs- und Zeitschriftenverlag GmbH & Co. KG, Mediaprint Zeitungsvertriebsgesellschaft mbH & Co. KG et Mediaprint Anzeigengesellschaft mbH & Co. KG, Affaire C-7/97

<sup>45</sup> Cf. notamment décision Sealink, JO L 15 du 18.1.1994 pp 8-19.

<sup>46</sup> En Anglais *Long Run Incremental Cost (LRIC)*. Il s'agit des coûts additionnels afférents à la fourniture du service, comparés avec les coûts de l'opérateur en l'absence de fourniture du service. Ces coûts incluent l'actualisation de tous les investissements d'entretien et de mise à jour technologique prévisibles à moyen et long terme. Il s'agit donc d'un flux de dépenses futures actualisées et non pas d'un coût historique.



méthode à privilégier : de fait, à l'article 1 de la Recommandation, elle considère qu'il s'agit d'une responsabilité qui incombe aux autorités nationales de régulation.

Les opérateurs devront être cohérents dans leurs méthodes de tarification : il ne serait pas normal en particulier que l'accès à la boucle locale soit facturé sur la base de coûts incrémentaux de long terme alors que les services de détail du même opérateur seraient encore tarifés aux coûts historiques. De telles pratiques de prix sont susceptibles de se traduire par des abus de position dominante sous l'article 82 du traité. La Communication souligne notamment à cet effet que le risque d'effet de ciseaux sur les marges (*'margin squeeze'*) est plus élevé lorsque les tarifs de l'opérateur historique n'ont pas été totalement rééquilibrés selon le principe de couverture des coûts.

D'une manière générale, un effet de ciseaux sur les marges, qui est une pratique de prix constitutive d'un abus au sens de l'article 82 du traité<sup>47</sup> lorsqu'elle émane d'un opérateur dominant intégré verticalement, est susceptible d'être mis en évidence quand il apparaît que les opérateurs historiques facturent l'accès à la boucle locale à des prix qui, si ils leur étaient imposés, rendraient la délivrance de leurs services correspondants d'accès aux

particuliers impossible au prix où ils la facturent, compte tenu des coûts supplémentaires afférents à la fourniture de ces services de détail. Il en résulte que les prix d'accès facturés aux nouveaux opérateurs (la connexion et la location mensuelle) doivent, par ligne, être sensiblement inférieurs aux tarifs de détail correspondants des opérateurs historiques. Cette relation est d'ailleurs reconnue par les opérateurs : Telia et Telenor, en vue de l'approbation de leur fusion par la Commission<sup>48</sup> (approbation finalement sans effet puisque la fusion a ex-post échoué), s'étaient engagés à ce que les coûts d'accès à leur boucle locale soient en tous cas inférieurs d'un facteur substantiel à leurs tarifs correspondants de détail.

#### La Recommandation de la Commission

La Recommandation de la Commission porte sur trois options :

- (i) **Le dégroupage total de la boucle locale** (dégroupage de l'accès à la paire de cuivre pour la fourniture concurrentielle de services avancés par des tiers). Cette option se traduit par une perte complète par l'opérateur historique de sa relation commerciale avec l'utilisateur, qui résilie son abonnement

auprès de lui et qui s'abonne aux services proposés par le nouvel entrant : ce dernier lui apporte aussi bien la téléphonie traditionnelle que les nouveaux services de type ADSL.

Le dégroupage complet suppose que le nouvel entrant soit un opérateur complet de services de télécommunications à même de délivrer une large gamme de services aux utilisateurs.

- (ii) La seconde option qui doit selon la recommandation être accessible aux utilisateurs et aux nouveaux entrants est ***l'utilisation partagée de la paire de cuivre***. Dans cette option, le nouvel entrant et l'opérateur existant partagent la même ligne de cuivre : le nouvel entrant offre des services à large bande (type ADSL) alors que l'opérateur historique continue à offrir à l'abonné des services à bande étroite (techniquement, le trafic à bande étroite et le trafic à large bande sont distingués au moyen d'un séparateur placé avant le commutateur de l'opérateur en place). L'abonné ne résilie donc pas son abonnement auprès de ce dernier, mais souscrit un nouvel abonnement auprès du nouvel entrant pour les services à large bande.

<sup>47</sup> Cf. Décision British Sugar, Journal officiel n° L 284 du 19/10/1988 p. 0041 - 0059

<sup>48</sup> Cf. décision du 13.10.1999, à publier.



Dans la pratique, cette option de dégroupage partiel convient aux petits opérateurs qui n'ont pas une offre complète de services et qui ne souhaitent pas prendre le risque de voir l'opérateur historique abandonner toute relation commerciale avec l'utilisateur (ce qui pourrait mettre en cause la qualité du service de maintenance de l'infrastructure). Le nouvel opérateur aura souvent tendance à faire à l'utilisateur une offre conjointe avec un offreur de services internet. Cette option a fait l'objet de commentaires très défavorables de certains opérateurs historiques, qui craignent manifestement qu'elle accélère l'entrée de nouveaux opérateurs de services à forte valeur ajoutée (type ADSL) spécialisés sur ce type de produits : l'expérience des Etats Unis, où l'ouverture de la boucle locale a été introduite en 1996, montre que c'est sans doute là que se trouve le potentiel le plus important de développement du dégroupage.

- (iii) Une troisième option est prévue par la recommandation mais ne constitue par un véritable dégroupage de la ligne : l'opérateur historique installe une **liaison d'accès à haut débit** qui

va jusqu'à l'abonné, puis la rend accessible à des tiers afin de leur permettre de fournir des services à haut débit aux clients. Cette dernière option place plutôt que les opérateurs concurrents en position de simples revendeurs sur la boucle locale, mais peut avoir un intérêt commercial transitoire pour eux en attendant qu'ils soient en mesure d'installer leurs propres équipements et de demander le dégroupage, partiel ou total, à l'opérateur existant.

La Commission a considéré que ces trois types d'accès à la boucle locale devraient être accessibles simultanément, le nouvel entrant et le consommateur (et non l'opérateur existant) devant avoir le choix.

### Conclusions

Une certaine prudence est nécessaire dans l'interprétation des droits d'accès à la boucle locale des opérateurs historiques sous les règles de concurrence, et les modalités du dégroupage à privilégier. Comme le note la Commission dans la Communication, compte tenu de la rapidité des évolutions technologiques, les définitions des marchés pertinents et l'analyse quant au caractère indispensable de la boucle locale pour la fourniture de services sur ces marchés devront être

réexaminés chaque fois qu'un cas se présentera.

Le dégroupage de la boucle locale est cependant un bon exemple de complémentarité possible entre la régulation sectorielle *ex-ante* et l'application du droit de la concurrence. La Recommandation de la Commission aux Etats Membres adoptée le 26 avril dernier n'impose rien à ce stade, c'est de la *soft law*, les Etats Membres ne sont pas actuellement contraints au dégroupage de la boucle locale. Mais la Commission a donné un signal clair : si le dégroupage n'est pas mis en oeuvre par la voie réglementaire au niveau national, il pourra dans bien des cas l'être en vertu de l'Article 82 du Traité. Les opérateurs historiques confrontés à des demandes d'accès à la boucle locale devront comprendre que, dans la majorité des cas, leur intérêt bien compris est de l'accorder, de façon non discriminatoire, sans quoi ils s'exposent à des actions en infraction de l'Article 82 du Traité. Ultérieurement, la *soft law* sera durcie : ainsi qu'annoncé par M. Liikanen le 26 avril lors de la présentation à la presse des orientations de suivi de la « Revue 1999 » adoptées par la Commission, le dégroupage sera par la suite introduit dans le nouveau cadre réglementaire communautaire et deviendra obligatoire.

Le chemin qui mène à une concurrence équitable sur la boucle locale est toutefois semé d'embûches, comme le montre



## ➤ OPINION AND COMMENTS

l'expérience de l'Allemagne, qui a introduit le dégroupage depuis 1998 : deux ans plus tard, Deutsche Telekom contrôle encore environ 99% du marché des services d'accès et des communications locales. Les conditions dans lesquelles a été organisé ce dégroupage en sont responsables :

- la loi allemande ne prévoit pas l'option prometteuse du dégroupage partiel proposé par la Recommandation de la Commission. Il est vrai

qu'Internet, le commerce électronique et les services à large bande de type ADSL n'avaient pas en 1998 le développement et l'actualité qu'ils ont aujourd'hui ;

- le régulateur national a maintenu les prix de détail des abonnements de Deutsche Telekom inférieurs aux prix d'accès à la boucle locale, imposant de la sorte un réel désavantage compétitif aux nouveaux concurrents.

L'effet combiné de la Recommandation de la Commission – ou de toute réglementation sectorielle à venir - et des règles de concurrence applicables sous l'Article 82 du traité pourrait désormais permettre un impact plus rapide du dégroupage sur l'ouverture du marché aux nouveaux opérateurs. Il faut le souhaiter en vue d'une diffusion accélérée d'Internet et du commerce électronique en Europe.





# ANTI-TRUST RULES

*Application of Articles 81 & 82 EC and 65 ECSC  
Main developments between 1<sup>st</sup> February and 31<sup>st</sup> May 2000*

## HORIZONTAL CO-OPERATION AGREEMENTS: Ensuring a modern policy

*By Joachim LÜCKING, DG COMP-A-1*

After the successful reform of the EC competition rules on vertical restraints, the Commission is now focusing on updating its policy on collaboration agreements between competitors (horizontal co-operation agreements). These agreements are potentially restrictive of competition and could thus fall under Article 81 of the Treaty. Guidance for the assessment of horizontal co-operation under the Community competition rules is currently given by way of two block exemption Regulations (on research and development (R&D) agreements<sup>49</sup> and specialisation agreements<sup>50</sup>) and

two Notices<sup>51</sup> (dealing with particular problems such as the assessment of co-operative joint ventures). As the block exemption Regulations will expire on 31 December 2000, and as the existing Notices have become largely outdated, the Commission is considering how the future assessment of horizontal co-operation should reflect changes in the economic and legal environment.

As a result of these reflections, the Commission on 27 April 2000 published

- a draft block exemption Regulation on the application of Article 81(3) of the Treaty to categories of specialisation agreements,
- a draft block exemption Regulation on the application of Article 81(3) of the Treaty to categories of research and

<sup>49</sup> Commission Regulation (EEC) No 418/85 of 19 December 1984 on the application of Article 81(3) of the Treaty to categories of Research and Development Agreements as amended by Commission Regulation (EEC) No. 151/93 of 23 December 1992, OJ L 53, 22.2.1985 p.5, OJ L 21, 29.1.1993 p. 8.

<sup>50</sup> Commission Regulation (EEC) No 417/85 of 19 December 1984 on the application of Article 81(3) of the Treaty to categories of specialisation agreements as amended by Commission Regulation (EEC) No 151/93 of 23 December 1992, OJ L 53,

22.2.1985 p.1, OJ L 21, 29.1.1993 p. 8.

<sup>51</sup> Notice on Agreements, decisions and concerted practices in the field of co-operation between enterprises (OJ C 75, 29.7.1968 p3); Notice concerning the assessment of co-operative joint ventures under Article 81 (OJ C 43, 16.2.1993, p.2).

- development (R&D) agreements,
- draft Guidelines on the applicability of Article 81 to horizontal co-operation agreements.

The objective of these documents is to clarify the application of competition rules in the area of horizontal co-operation agreements. The drafts have been made public both on the Internet-site of the Competition DG (<http://europa.eu.int/comm/dg04/entente/other.htm>) and in the Official Journal (C-118 of 27.04.2000). The publication starts the public consultation process on this reform.

### Orientations for Reform

The starting point for this reform is the recognition that horizontal co-operation between competitors can have both negative and positive effects on the market. On the one hand, horizontal co-operation may lead to competition problems. This is the case if the parties to a co-operation agree to fix prices, output or share markets, or if the co-operation enables the parties to maintain, gain or increase market power and thereby causes negative market effects with respect to prices, output, innovation or the variety and quality of goods.

On the other hand, horizontal co-operation may also often be useful and pro-competitive. Companies need to respond to increasing competitive pressure and a changing market place



driven by globalisation, the speed of technological progress and the generally more dynamic nature of markets. Co-operation can be a means to share risk, save costs, pool know how and launch innovation faster. In particular for small and medium sized enterprises co-operation is an important means to adapt to the changing economic environment. Consumers will share these gains, provided that effective competition is maintained in the market.

European competition policy does already take into account these dangers and benefits, but the existing system of notifications and authorisations puts an administrative burden both on companies without market power and the Commission. A review of the present policy towards horizontal co-operation agreements based on a wide-ranging consultation of European companies showed that industry regards the existing block exemption regulations as too narrow, inflexible, and too focused on legal clauses. Industry also expressed a need for clearer guidance on the assessment of other types of co-operation, not covered by any block exemption.

A review of cases dealt with by the Commission under Article 81 showed that around 40% of these cases concerned horizontal co-operation agreements. The majority of these (58%) involved forms of co-operation not covered by any block exemption

regulation. However, the number of horizontal co-operation agreements creating competition problems was limited.

It is therefore necessary to increase the relevance of the block exemptions for industry and to adopt a more economic approach both for the block exemptions and for the treatment of individual cases, while maintaining a strict approach towards anti-competitive agreements.

The draft documents thus aim to give better guidance to market participants. They will replace the fragmented and partly outdated notices and regulations in this area. The review is also an essential pillar in our attempts to modernise competition policy. The approach is very similar to that recently adopted for vertical agreements. By virtue of the clarified rules, the Commission's services will be freed from examining cases which are of no interest for competition policy and they will thus be able to concentrate on more important cases.

### **The draft block exemption Regulations**

The draft block exemption Regulations are supposed to replace the existing Regulations on Specialisation (Commission Regulation (EEC) No. 417/85) and R&D (Commission Regulation (EEC) No. 418/85). These Regulations expire on 31 December 2000. The adoption of the new Regulations before the

end of this year is thus desirable. They are based on the existing enabling Regulation<sup>52</sup>.

In comparison to the existing Regulations the drafts have been revised so as to make them more user-friendly and to increase its scope and clarity. The current block exemptions on R&D and Specialisation not only define categories of agreements which are covered, but also list the exempted clauses. These so-called "white lists" are deleted from both block exemptions. Instead they exempt all conditions under which undertakings pursue R&D and specialisation agreements, subject to certain conditions and the exclusion of hardcore restrictions. The idea is to move away from a clause-based approach and to give greater contractual freedom to the parties of such agreements.

In addition to this increase in flexibility, several changes in the *draft block exemption Regulation on R&D* should increase their scope and usefulness for industry. For example, it is proposed to increase the market share threshold for exemption from 20% to 25%. If the agreement

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<sup>52</sup> Council Regulation (EEC) No 2821/71 of 20 December 1971 on the application of Article 81(3) of the Treaty to categories of agreements, decisions, and concerted practices modified by Regulation (EEC) No 2743/72 of 19 December 1972, OJ L 285, 29.12.1971, p.46, OJ L 291, 28.12.1972, p.144.



foresees joint distribution of the products which were jointly developed, the market share threshold could be increased from currently 10% to 25%. The requirement to draw up a framework programme prior to entering into R&D agreements has been deleted, as experience has shown that it is not practical for companies to enter into such agreements prior to undertaking R&D. To protect competition in innovation, a provision has been added which allows the withdrawal of the block exemption in those cases where an agreement would eliminate effective competition in R&D on a particular market.

As regards the *draft block exemption Regulation on Specialisation*, it is not proposed to increase the market share threshold (currently 20%). However, the practical scope of the Regulation will be increased, through the deletion of the turnover threshold, and through the coverage of unilateral specialisation as an increasingly important form of outsourcing. On the other hand, safeguards against potentially harmful specialisation agreements have been introduced. This applies to the obligation of a cross supply obligation between two companies engaging in reciprocal specialisation so that no party leaves the market downstream of production.

### The draft Guidelines

The draft Guidelines complement the draft block exemption Regulations. They describe the general approach which should be followed when assessing horizontal co-operation agreements. They are thus applicable to R&D and production agreements not covered by the block exemptions as well as to most other types of competitor collaboration. The following types are covered: R&D, production, purchasing, commercialisation, standardisation, and environmental agreements.

All types of horizontal co-operation agreements are analysed according to a common analytical framework. This framework can be summarised as follows: a horizontal co-operation agreement restricts competition if it is likely to reduce competition in the market to such an extent that negative market effects as to prices, output, innovation or the variety or quality of goods and services can be expected. To cause a restriction of competition the parties normally need appropriate tools to co-ordinate their behaviour and a certain degree of market power. Consequently, a co-operation has to be assessed in its economic context taking into account both, the nature of the agreement and the parties' combined market power which determines - together with other structural factors - the capability of the co-operation to reduce overall

competition to such a significant extent.

These two categories of criteria normally have to be assessed together. There are, however, some instances where the nature of a co-operation indicates from the outset the applicability of Article 81(1). This concerns primarily agreements that have the object of restricting competition by means of price fixing (including pure sales agencies), output limitation or sharing of markets, customers or sources of supply. These 'hardcore' restrictions are presumed to have negative market effects and not to result in any efficiency gains or benefits to consumers. They are therefore generally prohibited.

On the other hand, there are also some agreements for which it can be said from the outset that Article 81(1) does not apply. These include agreements between non-competitors, agreements between competing companies that can not carry out independently the project or activity covered by the co-operation, or agreements concerning an activity far removed from the marketing level.

For all other agreements that may fall under Article 81(1) a market analysis is necessary. This assessment will be facilitated by the guidelines. The discussion by types of agreements allows taking account of specific competition problems related to the different



## ➤ ANTI-TRUST RULES

forms of co-operation. It also addresses the most common types of combinations, e.g. joint R&D with subsequent joint production.

### **Expected Impact of the Proposals**

The impact of the proposed changes on industry should be

positive. The increase in legal security should stimulate co-operation between companies with little or no market power, in particular small and medium-sized enterprises (SMEs). These companies will have greater contractual freedom for their co-operation and will be freed from the costs and delays associated with unnecessary notifications.

The consumers will also benefit from the proposals which will enable the Commission to concentrate on those cases which harm consumers by increasing prices or reducing output, innovation or the variety or quality of goods and services.



# MERGERS

Application of Council Regulation 4064/89

## **Case No : COMP/M. 1672 – Volvo/Scania**

By Dan SJOBLÖM, Merger Task Force

### **Introduction**

On 14 March 2000, the Commission decided to declare the proposed concentration between the two Swedish truck producers, Volvo and Scania, incompatible with the common market. The prohibition decision was based on what may be summarised as a straightforward case of classical horizontal overlaps and high market shares. In particular it was found that the proposed concentration would have created dominant positions on:

- the markets for heavy trucks in Sweden, Norway, Finland and Ireland;
- the markets for touring coaches in Finland and the United Kingdom;
- the market for inter-city buses in Sweden, Denmark, Norway and Finland; and
- the market for city buses in Sweden, Denmark, Norway, Finland and Ireland.

This purpose of this article is to summarise the central features of the Commission's competition analysis. In doing so, it will highlight two areas in particular, namely the definition of the relevant geographic market and the presence of unilateral effects.

While the article focuses on the analysis of the heavy trucks markets, largely similar reasoning was used to analyse the bus and coach markets.

Subsequent to the adoption of the decision, some commentators have argued that the decision demonstrates that companies from smaller Member States are at a competitive disadvantage in the assessment under the Merger Regulation. The article will briefly respond to these, obviously groundless, allegations.

### **The proposed concentration**

The proposed concentration involved the acquisition by Volvo of a controlling stake in Scania. On 6 August 1999, Volvo reached an agreement to acquire all of Investor AB's shares in Scania, equivalent to just under 50% of the voting capital. Concurrently, Volvo made a public offer for all other shares in Scania.

### **The relevant product markets**

Within the industry, trucks are often divided into three distinct categories based on the weight of the vehicle (light, medium and heavy trucks). None of the parties are active in light trucks and Scania has only *de minimis* sales of medium trucks. However, both parties are active

on a European or even worldwide basis in the production and supply of heavy trucks. In the decision, the Commission agreed with Volvo's proposed definition of the relevant product market as that for heavy trucks over 16 tonnes. Although heavy trucks are differentiated products, it was found that any further breakdown of the large variety of possible configurations of such vehicles would not be meaningful in terms of assessing the market power of the merged companies.

### **The Relevant Geographic Markets**

As far as the above-mentioned areas are concerned, the Commission concluded that the geographic reference market for heavy trucks is still national in scope. This conclusion was partly based on observed differences in technical requirements, purchasing habits and market shares in various Member States. However, the existence of price discrimination constituted the strongest indication that the effects of the merger should not, as proposed by Volvo, be assessed at the European level. In the course of the investigation the Commission found clear indications that truck producers are able to charge significantly different prices (often 10% or more) for similar products, even when they are sold in neighbouring countries. It was also found that the existence of such price differences did not



lead to any significant cross-border, or parallel, trade. The explanation for these phenomena is that heavy truck sales generally include a service package, which means that a significant proportion of the total price relates to a local service component.

### **Effects of the proposed concentration on the markets for heavy trucks**

Even before the proposed concentration, Volvo and Scania were already leading manufacturers of heavy trucks in the EEA. The merged entity would have become the leading supplier in the EEA with 31% of all sales, followed by DaimlerChrysler with 20%. At the level of the relevant national markets the merged entity would have acquired very high market shares, ranging from around 90% (in the Swedish market) to around 50% (in the Irish market). It was further noted that the parties' market positions have been both stable and largely symmetrical in the past and that the merged entity, in all of the markets, would have had a position several times stronger than the closest remaining competitor.

The existing evidence, that Scania prior to the proposed concentration had been competing strongly with Volvo and was widely regarded as its closest competitor, compounded the competition concerns resulting from the high combined market shares. The

reason for this is that the merged entity in such circumstances would have had even better possibilities to exploit its dominant position than indicated by its market shares alone. Given that Volvo's intention was to maintain the Scania brand and organisation as an entirely separate business unit, Volvo could, for example, have raised the prices for Scania trucks by 5-10%, safe in the knowledge that a significant proportion of those customers who would not accept such an increase would be likely to switch to the closest competing brand, i.e. Volvo. Since Volvo would also have controlled the closest brand, such a reaction to a price increase would have been revenue neutral to Volvo. The effect of controlling the two closest competitors on the market is therefore to substantially reduce the risk associated (even by a dominant firm) in imposing a supra-competitive price<sup>53</sup>. In this context, the Commission had found evidence that Volvo and Scania had pursued similar strategies in the relevant markets and that they had similar brand images, which were based on, inter alia, excellent quality and reliable service.

Furthermore, the investigation also showed that the barriers to

entry or expansion in these markets were high. Any competitor who would have wanted to challenge the merged entity would have had to make large investments over a significant period of time to build up the necessary critical mass of installed vehicles in the relevant markets. In reaching this conclusion, the Commission assessed - and dismissed - Volvo's claim that the transaction would necessarily lead to market share losses for the new entity, the extent of which, according to Volvo, would have been sufficient to preclude the creation of dominance.

For these reasons, the Commission concluded that, if approved, the concentration would have significantly changed the structure of the market for heavy trucks in Sweden, Norway, Finland and Ireland, and created a dominant position on each of those markets.

### **Proposed commitments**

Volvo submitted a package of proposed commitments in order to ensure the approval of the proposed concentration. Even though these commitments could, if properly implemented, have had some beneficial effect on the competitive situation in the relevant markets, the investigation showed that they would have been insufficient to resolve all the competition concerns resulting from the proposed acquisition of Scania.

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<sup>53</sup> For further information on the *Unilateral effects doctrine* in differentiated product markets, see e.g. *Federal Trade Commission v. Staples, Inc.*, 970F. Supp. 1066 (D.D.C. 1997).



The proposed commitments included certain measures relating to a particular, Swedish cab crash test for heavy trucks, and a temporary suspension of the Scania brand. These proposals were found to have little or no potential impact on the competitive situation. The cab crash test follows from Swedish law and can therefore only be abolished by the Swedish Government. It was therefore, despite Volvo's undertaking to use its best efforts to ensure its abolition, not possible to conclude that the test will be abolished. Equally, the proposed suspension of the Scania brand was found to be of limited significance, as it contained a number of significant limitations (both in terms of time and scope). Notably, it would not imply the withdrawal of the Scania product line, which, according to the proposal, would have continued to be sold under another brand of Volvo's choice.

Volvo had also proposed to divest its 37% stake in Bilia AB (a truck, bus and car distributor in the Nordic countries). The stated purpose would have been to remove one of the existing vertical links into the distribution level. However, on closer examination the Commission found that this company, even if the ownership link were to be removed, would remain economically dependent on Volvo in the same way as all other (non-integrated) Volvo dealers.

Volvo also proposed measures to open up access to its dealer and service networks for competing manufacturers. This proposal, which would basically have left the existing structure of the Volvo and Scania organisations intact, was however not found to provide either the existing dealers or the competitors with sufficiently strong incentives to have a real impact on the market.

The undertakings proposed by Volvo for the coach, city- and inter-city bus markets were also found to be too limited in scope to significantly facilitate access to the relevant markets for competitors. They were therefore considered as insufficient to remove the competition concerns in each of the relevant markets.

### Conclusion

Given the negative effects on competition on at least 15 relevant markets, and the failure of Volvo to propose any undertakings that fully removed these concerns, the Commission decided, on 14 March 2000, to declare the proposed concentration incompatible with the common market.

Although there are no "new" lessons to be learned from the decision, it confirms the Commission's commitment not to allow the creation of dominant positions through concentrations. It thereby highlights the need for firms that have strong and overlapping market positions to carefully assess all elements that

are relevant for the assessment of the scope of the geographic market. Caution is clearly called for if that assessment provides indications that the geographic market may not be sufficiently wide to exclude competition concerns. This applies in particular if the firms are close competitors on differentiated product markets.

### The aftermath

Following the Commission's decision in Volvo/Scania, certain commentators alleged that the Commission's competition policy discriminates against large firms from "smaller" Member States who, it was alleged, would be unduly hindered from expanding through mergers and acquisitions. This allegation is of course completely without foundation.

First, it must be recalled that the purpose of any competition based merger control system is to ascertain the absence of negative effects on any relevant market. The only way to avoid an arbitrary assessment that would reduce merging firms' legal certainty is to apply this test without having regard to whether such markets are small or large in absolute or relative terms.

Second, it should be remembered that the success of companies such as Volvo and Scania have largely been due to the competition between them. This explains, to a large degree,



why they have both become successful international companies with more than 80% of their sales outside the Nordic region. Even from an industrial point of view it is not clear why it would be in anyone's interest to have competition between such companies eliminated through a merger.

Third, the implied suggestion - to allow mergers that would lead to dominant positions on "small home markets" - would, in addition to being unlawful under the Merger Regulation, lead to discrimination against customers and consumers in smaller Member States. These customers would then become exposed to the dominance and the Community would fail to protect them in the same way as if they had been active in a "large market". The suggested approach would also lead to discrimination

against companies from larger Member States who would, firstly, be barred from entering the market(s) of the dominant firm, whereas the merged entity would be able to enter the larger and more open markets. Secondly, companies with "large home markets" would also be discriminated against by not being able to claim this peculiar "small market defence".

Finally, it should be stressed firms based in smaller countries and which have high market shares in their home markets, such as Volvo and Scania, are certainly not precluded from expanding through structural transactions. In fact, within some weeks of the Commission's negative decision both Volvo and Scania have found alternative strategic partners. Scania has a new large (although not controlling) shareholder,

Volkswagen AG, which was not previously active in the production of heavy trucks and buses. This transaction did not fall under the Merger Regulation, as VW's acquisition of 34% of the voting rights in Scania did not confer control in the meaning of the Merger Regulation.

Just a few weeks later, Volvo announced its intention to acquire Renault's heavy truck division (RVI) in exchange for 15% of the shares in AB Volvo. This transaction will fall to be assessed under the Merger Regulation. Without prejudging the assessment that will have to be made of the Volvo/Renault transaction, it appears clear that those who claimed that the Volvo/Scania merger was a *sine qua non* have already been proven mistaken.

## **Main developments between 1st January and 30 April 2000**

*By Anna PAPAIOANNOU, Walter TRETTON and Neil MARSHALL, Merger Task Force*

### **I. INTRODUCTION**

A substantive number of notifications was submitted in the first four months of 2000 (95 compared to 92 in the same period in 1999). Important workload was derived by the record level of cases in phase II,

involving deeper market investigation: no fewer than 9 phase II investigations were carried over from 1999,<sup>54</sup> while

<sup>54</sup> In six of these cases a final decision was taken within in the period covered by this review, one was withdrawn and two investigations, namely in cases M. 1671 - DOW

six new ones were opened in the period covered by this review.<sup>55</sup> Consequently this led to an unprecedented number of six decisions under Article 8 of the

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CHEMICAL/UNION CARBIDE and M.1693 - ALCOA/REYNOLDS, were still ongoing at the end of this period.

<sup>55</sup> M.1673 - VEBA/VIAG, M.1741 - MCI WORLDCOM/SPRINT, M.1813 - INDUSTRI KAPITAL (NORDKEM)/DYNO, M.1806 - ASTRA ZENECA/NOVARTIS, M.1882 - PIRELLI/BICC, JV.27 - MICROSOFT/LIBERTY MEDIA/TELEWEST.





Merger Regulation<sup>56</sup>, which is twice the number taken during the same period in 1999 and three times that of 1998. The deeper phase II investigations conducted in the period under examination eventually concluded in one prohibition (VOLVO/SCANIA)<sup>57</sup> and five approval decisions subject to commitments (AIR LIQUIDE/BOC<sup>58</sup>, LINDE/AGA<sup>59</sup>, TOTALFINA/ELF AQUITAINE<sup>60</sup>, ALCAN/ALUSUISSE<sup>61</sup>, MMS/DASA/ASTRIUM<sup>62</sup>). In this context it is interesting to mention that the parties abandoned the deal in the case ALCAN/PECHINEY a few hours before an imminent prohibition.

Eleven cases were cleared with commitments at the end of a phase I investigation. Such commitments are intended to solve competition problems that are "readily identifiable and can easily be remedied".<sup>63</sup> Commitments at the end of a phase II investigation were accepted in five cases. The experience on remedies gleaned by the Commission in these and

previous cases will be reflected in a forthcoming Notice on Commitments.

It should be underlined that the Commission has continued to work very closely with competition authorities of third countries and of Member States concerning remedies and other issues on individual cases. For the record, GENERALI/INA<sup>64</sup> may be mentioned as an exemplary case of co-operation with competition authorities of a Member State. The parallel aluminium cases ALCAN/ALUSUISSE and ALCAN/PECHINEY gave the opportunity for effective collaboration with the US competition authorities.<sup>65</sup>

A situation of increasing workload faced by the Merger Task Force, received the attention of certain media.<sup>66</sup> The forthcoming Notice on Simplified Treatment of Routine Cases could be viewed in this context.

The issue of workers' participation in merger procedures became topical on occasion of the decision UNILEVER / AMORAMAILLE<sup>67</sup>. The Merger Regulation clearly stipulates in

Article 18.4 that employees' representatives should be entitled to be heard, upon application, in the context of a phase II examination. It should be underlined that that up to the present, the Commission has never refused to hear workers' recognised representatives at any stage of the procedure. It should be borne in mind however that, in the context of merger analysis, the Commission will only hear the aspects being governed by competition law. DG Competition firmly believes, that the workers' right to be heard should be sufficiently publicised.

During the period under examination, the Court of First Instance delivered one judgement in the joined cases involving action by The Coca Cola Company (TCCC) and Coca Cola Enterprises (CCE) versus the European Commission.<sup>68</sup>

In 1997 TCCC and CCE had appealed against a Commission decision authorising the sale by TCCC and by Cadbury Schweppes to CCE of their interests in Amalgamated Beverages. The Commission had considered that although Coca Cola and Cadbury Schweppes had held a dominant position in the British cola market prior to the operation, the concentration

<sup>56</sup> i.e. decisions following the four months' further investigation.

<sup>57</sup> M.1672.

<sup>58</sup> M.1630.

<sup>59</sup> M.1628.

<sup>60</sup> M.1628.

<sup>61</sup> M.1663.

<sup>62</sup> M.1636.

<sup>63</sup> Recital 8 of Council Regulation (EC) 1310/97 amending Council regulation EEC 4064/89 (the Merger Regulation).

<sup>64</sup> M.1712.

<sup>65</sup> For an analysis of these aluminium cases, see comprehensive article in this issue by Dimitri Giotakos.

<sup>66</sup> e.g. FINANCIAL TIMES, 14.4.2000, or Neue Zürcher Zeitung, 29/30.04.2000.

<sup>67</sup> M.1802.

<sup>68</sup> Joined cases T-125/97 and T-127 – THE COCA COLA COMPANY v. COMMISSION and COCA COLA ENTERPRISES v. COMMISSION of 22.3.2000.



itself did not strengthen this dominance.

In its decision the Commission had simply 'taken note of' an undertaking by CCE to refrain from certain commercial practices, but had not made the decision conditional upon it. The CFI, after examining the file and evaluating the statements made in the course of the procedure, held that the inclusion of this undertaking did not produce legal effects (in the sense that a breach of its terms would entail the decision's revocation) and therefore was not legally challengeable.<sup>69</sup>

## II. RELEVANT CASES

In the period of time covered by this review, the Commission had the opportunity to examine closer certain markets which are of immediate interest to consumers (such as domestic and motorway fuels, mobile telecommunications, pay-TV) Furthermore, deeper investigation was conducted in sectors which are currently

undergoing fundamental restructuring leading to a significantly higher degree of consolidation (industrial gases, aluminium, pharmaceuticals) or which are already highly consolidated (chemicals).

The definition of the scope of the geographic market was the central point in the Commission's investigation which led to the prohibition of the take-over of SCANIA by VOLVO. In its decision, the Commission has made it clear that the consistent application of the dominance test to any relevant geographic market, independently of its size, besides being within the letter and spirit of the Merger Regulation, guarantees protection to consumers from the effects of dominance, in small and large markets alike and especially where the common market rules have not been fully effective.<sup>70</sup>

The take-over of ELF-AQUITAINE by TOTAL-FINA<sup>71</sup> was a case of regrouping of first league national players leading to the creation of "national champions". The general competition concern in such cases is that dominant positions may be created in the parties' traditional national

markets which would subsequently lead to a partitioning of the national territory between them with further destabilising impact on the structure of the common market. The Commission's task was to identify and eliminate (i) activity overlaps and (ii) bottlenecks that could enable the new entity to lock the market to its profit by control of import logistics, of transport and distribution of refined petroleum products. The operation called for careful assessment also due to its expected significant impact upon vital markets for consumers.

In examining the mergers AIR-LIQUIDE/BOC and LINDE/AGA (all companies rated between first and sixth worldwide in terms of turnover), the Commission was faced with the first two cases of global consolidation in the industrial gases industry.<sup>72</sup>

In AIR LIQUIDE/BOC, the Commission identified distinct product markets in the industrial gases sector, defined by type of gas and by method of distribution, namely, (i) the tonnage market (large quantities of oxygen and nitrogen to industrial users, sold through dedicated production plants installed on the customer's site or transported through pipelines),

<sup>69</sup> The other points of the appeal were held to be inadmissible on grounds of not producing legal effects. These were a control question, the definition of the relevant market (cola-flavoured carbonated soft drinks) and the finding that Coca Cola and Schweppes Beverages held a dominant position on the British cola market. The CFI considered it was not the mere finding that a company held a dominant position at a given time that might give rise to the risk of fines but its resorting to conduct which constitutes an abuse of that position.

<sup>70</sup> For a comprehensive analysis of the case, see special article in this issue by Dan Sjöblom.

<sup>71</sup> For an analysis of the issues involved in this case, see article by A. Schaub, Cl. Rakovsky, H. Piffaut, P. Deluyck in Competition Policy Newsletter, No 1, 2000.

<sup>72</sup> The AIR LIQUIDE/BOC deal was eventually abandoned by the parties following unsuccessful negotiations on remedies with the Federal Trade Commission in the US.



## ➤ MERGERS

(ii) the bulk market (lower quantities of liquid gases usually to be transported by rail or road to the customer's site) and (iii) the cylinders market (storage in cylinders of smaller quantities of gases still in gaseous form). The Commission took account of the inter-relation between these markets, implying for instance, that a strong position on the tonnage market will often confer competitive advantages on the bulk market and vice-versa.

The tonnage market was considered to be EEA-wide. On this market the parties would have obtained dominant position. The parties, however, offered commitments which were found to remove the Commission's competition concerns

The geographic market for bulk and cylinder gases (with the exception of certain high purity and high value gases) was found to be national in scope mainly due to different prices, market structures and distribution systems in Member States. The operation would have strengthened the dominant position in certain bulk and cylinder markets of Air-Liquide in France and of BOC in the UK and Ireland. Furthermore, by combining existing dominant positions in neighbouring countries in these markets, the operation raised the concern that an extended area would be perpetually dominated by one single entity. The remedies proposed aimed at ensuring the effective opening of the former home markets to competition,

through divestment of plants mainly in the UK and France. The annual sales of the divested plants were in the range of about half of the market share that Air Liquide would have otherwise acquired.

In the helium and electronic specialty gases, which were found to be wider than national in scope, the operation would threaten to create a joint dominant position between the new entity and Air Products (a joint bidder with Air Liquide in the acquisition of BOC, subject to the division between them of BOC's assets after completion of the deal). In helium, where the operation would have reduced the vertically integrated suppliers from four to three, remedies consisted in the divestiture of contracts for liquid helium supply from Russia and Poland, access (via back-to-back agreements) to Air Liquide/BOC's purchasing agreements in the USA, plus a freezing of Air Liquide's joint control (together with Air Products and ultimately with the Algerian Government) on the important Algerian supply. Remedies vis-à-vis the joint dominant position that the operation would create in electronic specialty gases, consisted in the divestment of the transfill facility owned by Air Liquide in France (together with the necessary technology licences, customer information and purchase orders to keep it a viable business), as well as of a commitment to grant third party access to licences to BOC's patented technology, a process to

be managed by an independent patent attorney.

The Commission's findings in the Air-LIQUIDE/BOC case, as regards the product and geographic market definition of tonnage, bulk and cylinder gases were confirmed in the parallel case LINDE/AGA. Commitments in that case covered divestments in the bulk and cylinder gas markets in the Netherlands and Austria.

The Commission's investigation in the VODAFONE AIR-TOUCH / MANNESMANN<sup>73</sup> case showed that there is an emerging demand for advanced seamless pan-European services from internationally mobile customers. In particular large corporations with substantial amounts of European cross-border businesses have a greater demand for such advanced services than other types of subscribers. These new services essentially include pan-European offerings of Internet mobile services and wireless location services and will, to a substantial degree, be accessed through Internet mobile portals.

The advanced pan-European services are heavily dependent on the ability of operators to precisely locate their customers when the latter are outside the reach of their own network. With existing GSM networks this is not possible, but through new

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<sup>73</sup> M.1795.



technologies such as GPRS,<sup>74</sup> EDGE<sup>75</sup> and CAMEL,<sup>76</sup> operators will be able to integrate each others networks to provide these services seamlessly. These technologies also allow a significant improvement with regard to the speed information and data (including content) can be transferred through the different networks. However, in order to provide seamless services, operators have to agree on the modifications on the existing network configurations, centralised management solutions and cost and profit allocation.

Following the merger, the new entity has a unique footprint in the common market, with sole control of mobile operators in eight Member States and joint control in three. In addition, it has an unrivalled customer base (almost double the amount of its nearest competitor only in Europe). Through the large footprint, it appeared that the merged entity would be in a unique position to build an integrated network which would

enable a quick implementation of the provision of advanced seamless pan-European services, at least in those Member States where it has sole control. On the other hand, the merged entity's competitors, because of their segmented footprints and the difficulties in integrating their networks into a seamless one, would not be able to duplicate this in the short to medium term (on average 3-5 years). This raised serious doubts as to the compatibility of the merger with the common market.

The remedies accepted consisted in, (i) the de-merger of Orange Plc, as a stand-alone business including all its subsidiaries, in order to face competition concerns in the UK and Belgian mobile telephony market, (ii) the granting to other mobile operators of the possibility to provide pan-European advanced seamless services to their customers by using the integrated network of the merged entity. Due to fast developments in the sector, to the award of 3<sup>rd</sup> generation UMTS licences and to the fact that competitors will in all likelihood try to build up alternative infrastructure, the undertakings have been limited to a period of three years.

In the course of the investigation in the BT/ESAT<sup>77</sup> case, the Commission found evidence of the existence of a market for the distribution in Ireland of pan-European or global end-to-end

network services, which encompass managed data networks, frame relay services, voice virtual private networks including call centre services. While the production of global services has a global dimension, their distribution may have a narrower/national dimension. Indeed, global service providers require a national presence and often appoint independent local distributors with their own network for handling traffic in that market. Due to the already established position of ESAT in the distribution of such services in Ireland, the merged entity would have controlled between 50% and 60% of the Irish market. As a remedy BT undertook to grant the global services provider Global One, the right to terminate the distribution agreement with ESAT or, alternatively, to disclaim any exclusivity distribution rights. Moreover the parties undertook not to renew another provider's (Infonet) distribution agreement. All these remedies were aimed at opening up the Irish market for the distribution of global telecommunications services.

In the ASTRUM case (joint venture between MMS and DASA), the Commission analysed the satellite production market both as regards prime contracting and equipment producing activities. As it emerged from the Commission's enquiry, each of the sub-systems and equipment products which constitute the platform and payload of a satellite might

<sup>74</sup> General Packet Radio Service, a technology developed for GSM networks to allow enhanced rates of data transfer.

<sup>75</sup> Enhanced Data GSM Environment or Enhanced Data Rates for Global Evolution, represents the final evolution of data communications within the GSM standard (second generation+).

<sup>76</sup> Customised Application of Mobile Enhanced Logic, a GSM feature name for including Intelligent Network functions into the GSM system. The technology will be become available after 2002.

<sup>77</sup> M.1838.



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constitute a distinct product market. In particular, there appeared to be a distinct market for mechanical wheels (used for the stabilisation of the satellite attitude). The geographic market for such equipment for observation and scientific satellites appears to be European-wide. This is due to the fact that such satellites are commissioned by space agencies, such as the European Space Agency (ESA). ESA in specific, takes care that contract allocation at certain production levels within a project takes place on the basis of the geographic "juste retour" (fair return) principle which requires it to (i) grant preference to the fullest extent possible to industry in all ESA Member States (ii) to ensure that all ESA Member States participate in projects in an equitable manner, having regard to their financial contribution to ESA.

The Commission also identified a distinct market for military communication satellites in France. In that market, where procurement is based on open competition between MMS and just one another competitor (Alcatel Space), there was risk that the operation would create a dominant position. Since DASA were the only supplier to Alcatel Space for a series of sub-systems and equipment, the operation would result in Astrium becoming both a competitor and key supplier to Alcatel Space. It would therefore be in a position to foreclose the market to Alcatel Space.

MMS undertook to divest its business in mechanical wheels, as a remedy to the fact that following the operation the only other supplier of this product in Europe would have depended on sales to Astrium. A second undertaking concerned the granting of DASA's licences for the manufacturing and sale of other equipment products (chemical propulsion systems, chemical thrusters and on-board management systems) to prevent foreclosure of the market to Alcatel Space.

The acquisition by GENERALI, a company active in the insurance sector both in Italy and abroad, of INA, one of the largest Italian insurers was cleared by the Commission subject to a number of commitments. Accordingly, Generali undertook to divest its controlling stakes in three subsidiaries active in the life insurance sector and its shareholding in the insurance company Fondiaria. INA undertook to divest its controlling interests in the bank insurance company Bnl Vita and in Banco di Napoli. The competition concerns raised by the transaction were aggravated by the existence of significant interlocking directorships, whereby directors of Generali and INA were also member of the boards and/or Executive committees of some of their competitors in the life insurance sector. Both Generali and INA undertook to eliminate such interlocking directorships in order to prevent co-ordination of

the competitive behaviour of the interlocked companies.

The case SHELL/BASF<sup>78</sup> (project Nicole) concerned a joint venture in which the parties proposed to combine all of their worldwide polypropylene ("PP") and polyethylene interests held by Montell, Targor and Elenac. The joint venture was cleared after a Phase I investigation subject to a package of commitments offered by the parties.

The combination of the two companies' businesses raised horizontal competition issues in the markets for PP technology licensing, PP resins and PP compounds that were remedied by commitments to divest significant amounts of resins and compounds production capacity as well as BASF's PP technology licensing business (Novolen).

In addition, BASF holds a suite of patents for the next generation of PP catalysts (metallocenes) that would have been strong enough to block others bringing any metallocene catalysts to the market. The Commission considered that the combination of this strong patent position with the position that the joint venture would have held in the traditional (Ziegler-Natta) catalysts and technology would have further strengthened the parties' dominance. To remedy these concerns, the parties

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<sup>78</sup> M.1751.



committed to a package of measures involving licensing and non-assertion of these patent rights, as a result of which the joint venture's ability to prevent the development of metallocene catalysts will be removed.

The parties proposed a form of "pendulum" arbitration that had not previously been seen by the Merger Task Force. In the negotiations for the consideration for the patent licenses can be reached then both negotiating parties would submit a single proposal to the arbitration panel. This panel can only decide in favour of one of the two submitted proposals – in its entirety. The Commission believes that this process therefore creates incentives for the parties to submit fair and reasonable offers and provides a route to solving complex negotiation issues fairly and without burdening the Commission's resources.

### **III. REFERRALS TO MEMBER STATES**

In the first four months of 2000, the Commission referred all or part of the deal to Member States' competition authorities in three cases. Of these, two were referred in full to the UK (ANGLO AMERICAN/TARMAC<sup>79</sup> and HANSON/PIONEER<sup>80</sup>). The other (CARREFOUR/PROMODES<sup>81</sup>)

was the subject of two partial referral decisions, one to France and one to Spain, as well as a conditional clearance decision by the Commission.

While neither of the two cases that were referred in full raised new issues, they were closely related and the analysis applied in the ANGLO AMERICAN/TARMAC case was directly applicable in the subsequent analysis of the acquisition of Pioneer by Hanson. Both concentrations involved the supply of aggregates - sand, gravel, etc - and related downstream products such as ready-mixed concrete and asphalt in the UK. Due to the costs involved in transport of these products, the Commission's investigations reaffirmed its conclusions in previous decisions that the geographic markets for these products are local and distinct, thereby fulfilling the conditions for referral. Neither case raised competition issues in other Member States, and so it was possible to refer the cases in full.

The jurisdictional fallout of the concentration between Carrefour and Promodès was rather more complex. In relation to the downstream, retailing activities, the deal would have created competitive problems on localised retail markets in France and Spain. The relevant authorities in these two countries requested the referral of all these markets on the basis that these were not a substantial part of the common market and they were

subsequently referred. However, the Commission retained jurisdiction over the remaining parts of the deal, where the geographic dimensions of competition were considerably wider.

<sup>79</sup> M. 1779

<sup>80</sup> M. 1827

<sup>81</sup> M. 1684

# LIBERALISATION & STATE INTERVENTION

Application of Article 90 EC

Main developments between 1<sup>st</sup> February and 31<sup>st</sup> May 2000

## Long-term supply agreements in the context of gas market liberalisation: Commission closes investigation of Gas Natural

By Mariano FERNÁNDEZ SALAS, DG COMP-E-3

### Introduction

On 27 March 2000 the Commission announced its decision to close its investigation concerning the long-term gas supply agreement entered into by the Spanish gas company GAS NATURAL, belonging to the REPSOL-YPF group of companies, and the Spanish electricity generator ENDESA after both parties modified the terms of their agreement in line with the competition concerns expressed by the Commission in a warning letter<sup>82</sup>.

The original transaction, the first of this kind in Spain, provided GAS NATURAL with an important gas contract in terms of quantities sold and of long duration in the fastest growing segment of the Spanish gas market: gas for electricity generation.

### The context of the agreement: the liberalisation of the gas market.

The transaction between GAS NATURAL, the dominant supplier in the Spanish gas

market, and ENDESA, the market leader in the electricity business in Spain, took place at a particularly crucial moment in the liberalisation of the Spanish and European gas markets.

The interest of the Commission in this case was to ensure that the gas supply contract did not allow the dominant gas supplier to prolong its *de facto* monopoly for many years and thus impede new entry in the Spanish gas market which had started to be liberalised.

GAS NATURAL used to hold a monopoly on all Spanish gas markets (except for some distribution licences in a few areas). Liberalisation started in 1996 in Spain when the monopoly rights of GAS NATURAL were partly lifted for large industrial consumers as well as for power generators. The latter are of particular interest to new entrants in the market because of their requirement to purchase large quantities over longer periods of time. Power generators are also potential entrants into the wholesale gas market themselves (ENDESA is, for example, already present in the gas

distribution market). Gas is a key fuel for power generators not only as a substitute for coal but also as a product to be offered to final consumers ("multi utility").

Ensuring the openness of the Spanish market (and of other national markets) was (and still is) of paramount importance at the time given that the EU Gas Directive enters into force in August 2000, providing for the initial stages of the liberalisation of the European market.

### The issues at stake

The more important infringements of competition arising as a result of the agreement between ENDESA and GAS NATURAL were:

- the creation of barriers to entry into the liberalised Spanish gas market as a result of a long-term supply agreement having a *de facto* exclusive character and leading to a foreclosure effect in the market; and
- the own use requirement established in the contract amounting to a restriction on the resale of gas which led to an artificial segmentation of Spanish gas markets.

However, before analysing the existence of the infringements to competition, the first step was to establish the relevant market affected, both in terms of product and geographical market, as well as the question of the existence of a dominant position in that market.

<sup>82</sup> See IP/00/297 of 27.03.2000



**1. The product market affected.**

The approach of the Commission in previous decisions, notably in the context of the merger regulation<sup>83</sup>, can also be followed in this case. Firstly, gas is considered to be a separate product from other sources of energy like electricity or petrol. Secondly, different customer groups can constitute separate relevant gas markets. Thus the bulk supply of gas to eligible industrial customers or to wholesalers can be a different market (free market) from the regulated market of distribution in which customers are captive. It was the first of these two markets which was affected by the transaction. In this context, one could argue that electricity generators constitute a special group of customers within the free market as a result of their own special demand conditions. However the reply to this question can also be left open since the conclusions drawn as to the geographical dimension of the market and as to the position of GAS NATURAL on the relevant market would remain unchanged.

**2. The geographical market affected.**

In previous cases, such as the Exxon/Mobil merger, the Commission found that wholesale markets were still national at this stage. The market conditions are determined by the past monopolistic structure with one company holding a de facto monopoly on import, transport (pipelines and LNG terminals), storage and resale of gas. While the Spanish legislation allows eligible customers to import gas directly, some services can only be provided almost exclusively by wholesale companies established at national level (balancing, back-up, security storage, diversification etc.). This makes it difficult for eligible customers (and gas producers) to by-pass the services of wholesale transmission companies. It is true that the geographical relevant market may acquire a wider dimension with the entry into force of the Gas Directive and the general introduction of TPA on the gas networks in all Member States. However, these regulatory changes will bring about merging markets in the longer run only and markets remain essentially national at present. These conclusions can also be applied to this case.

**3. The dominant position.**

The market position of GN is still very strong even after 3 years of the liberalisation process. GN supplies around 90% of the requirements of

industrial customers and electricity generators in the free market. This militates in favour of a presumption of dominance, in accordance with past case-law (Hoffmann-La Roche and Akzo). This presumption is also supported by the strong position of GN in the regulated market where it supplies (and will legally continue to supply until 2008) around 90% of the customers.

One could argue that the supply of gas for electricity generation was an emerging market in Spain since this contract was the first of its kind to supply new generation (CCGT) plants (though gas was already supplied for electricity generation to existing thermal plants also able to burn fuel). In emerging markets high market shares do not necessarily indicate dominance. However, this view cannot be followed: the electricity generation market is certainly a growing market but not an emerging market. It is not an *ex-novo* market created, for instance, by new technological developments, but rather a segment of a wider market that could become a separate market as a result of a different demand structure, assuming that electricity generators have special characteristics that distinguish them from other large industrial consumers. However, from the point of view of supply, the difference between supplying an electricity generator and an interruptible industrial consumer that uses gas to produce electricity in a co-

<sup>83</sup> See in particular Decision of 01.09.1994, case n° M.493, Tractebel/Distrigaz; Decision of 02.06.1998, case n° M.931, Neste/Ivo and Decision of 29.09.1999, case n° M.1383, Exxon/Mobil.





generation unit is small, except perhaps with regard to the volumes supplied.

If the argument of the existence of an emerging market was, nevertheless, accepted, one has to consider whether high market shares indeed indicate a dominant position. Such assumption presupposes that the emerging market in question remains open to new entrants and that the quasi-monopoly market position is consequently only temporary<sup>84</sup>. During the investigation, however, there were some indications that GAS NATURAL, even under a dynamic perspective, does enjoy a dominant position in the growing market segment of gas sales to electricity generators and will maintain its dominant position on a lasting basis. The strong position of GAS NATURAL as an importer into Spain (only true importer) and its gate-keeper function for access to the infrastructure militated in favour of considering GAS NATURAL a dominant company.

Thus, the dominant position resulted from the considerable market shares held by GAS NATURAL in the relevant and neighbouring markets, its control of the gas infrastructure in Spain as well as from the commercial advantages it enjoys vis-à-vis its potential competitors.

#### 4. The alleged abuses of Gas Natural dominant position.

The Commission's claims were basically the following:

- *Creation of barriers to entry into the liberalised Spanish gas market: de facto exclusivity and long duration of supply contract.* ENDESA, through the contract in question, was basically covering all its gas requirements for the foreseeable future and a large proportion thereafter in accordance with its perceived share of Spanish power production. At the same time, potential entrants were losing an attractive client in terms of volumes, as electricity generators are among the larger customers of gas. Entry of new competitors was rendered more difficult and thus less likely. The subsequent foreclosure effect in the Spanish market substantially hindered the ongoing liberalisation of the European gas market. Consequently, the dominant position of GAS NATURAL was reinforced.
- *Own use requirement: restriction on the resale of gas and segmentation of Spanish gas markets.* The original agreement also had the effect of limiting the competitive position of ENDESA in the gas market, where at present it is a small player, since it was not allowed to resell the

competitive gas purchased from GAS NATURAL for electricity generation, while GAS NATURAL undertook, in a separate agreement, to supply gas for resale at a different price. Price differentiation according to final use and resale prohibition is the classic behaviour of dominant firms. Lowering the prices to customers that are likely to attract new entrants, while maintaining a higher level of price in other segments of the market (market segmentation), certainly helps to maintain the market position of dominant firms (such as GAS NATURAL).

- *Discrimination of other Spanish gas purchasers.* Other clauses of the original agreement had the effect of providing ENDESA better treatment than other future buyers from GAS NATURAL without any valid justification.

#### THE AMENDMENTS PROPOSED BY THE PARTIES.

Following its investigation, during which the Spanish Competition Authorities were duly informed in application of the Commission's cooperation notice of 1997<sup>85</sup>, the Commission informed the

<sup>84</sup> See Decision of 09.11.1994, case n° M.469, MSG Media Service.

<sup>85</sup> The Spanish authorities dealt with other parts of the agreements between ENDESA and GAS NATURAL. In particular, they prohibited the merger of part of the gas distribution network of both companies in two Spanish regions.



companies concerned that the original supply agreement could constitute an infringement of Article 82 of the Treaty as it had the effect of reinforcing the already existing dominant position of GAS NATURAL in the Spanish gas market.

GAS NATURAL and ENDESA, replying to the concerns of the Commission, proposed some amendments to the gas supply contract. Their proposals were basically the following:

- Substantial reduction (around 25%) of gas volumes covered by the contract in order to free part of ENDESA's purchasing capacity ensuring its continued existence as a customer in the gas market which could attract new market entry. Thus, the exclusivity ratio diminished and reached a point where it was no longer possible to claim the existence of *de facto* exclusivity in the contract.
- Reduction of the long-term duration of the supply contract by one third in order to avoid the excessive long-term dependence of the customer on the supplier. Thus, the contract will not exceed 12 years in the plateau period.
- GAS NATURAL will not require ENDESA (or any other electricity generator in future contracts) to use the gas for electricity generation purposes only once supplies reach the plateau level. Thus

ENDESA becomes free to resell the gas<sup>86</sup>.

- Modification of other clauses of the agreement that could have the effect of discriminating in favour of ENDESA compared to other gas customers.

### CLOSING OF THE PROCEDURE AND EFFECTS ON THE LIBERALISATION OF THE GAS MARKET.

In view of the commitments made by the parties, the Commission decided not to pursue its *ex-officio* case against GAS NATURAL:

- As a result of the reduction of the volumes to be supplied and of the duration of the contract, not all of ENDESA's requirements are

satisfied. Accordingly, ENDESA will need to purchase more gas in the future, thus attracting new suppliers and bringing more competition to the Spanish market. In this case, the Commission considered that the volumes concerned are large enough to attract new entrants. Indeed, it appears that quite substantial minimum quantities need to be involved before entry into discussions with gas producers/traders, not yet selling in the geographical market concerned, can be envisaged, in particular when the purchases relate to Liquefied Natural Gas.

- Allowing ENDESA (or other gas buyers) to resell the gas will completely change the pattern of trade in the market. GAS NATURAL will no longer be in a position to segment the market, and may face sales from ENDESA (or other large gas buyers) in the gas market.
- Access by power generators to competitive natural gas as a substitute for coal is crucial for the development of a competitive electricity market. In addition, natural gas is also a product that electricity producers can offer to final consumers ("multi energy"). Under the terms of the agreement as amended, ENDESA will be able to offer gas at spot market conditions in the gas market, while developing at the same time its new power generation park.

<sup>86</sup> Except for the build-up period. During this period, GAS NATURAL increases the gas deliveries to ENDESA progressively. Because of the flexibility conditions, it was accepted that, during the build-up period, GAS NATURAL could require an own use requirement from ENDESA. However, the flexibility argument cannot play a role anymore once deliveries in the agreement reach the plateau level. Asking GAS NATURAL for a complete removal of the resale prohibition would not have a practical impact, since during the build-up period, it would be difficult for ENDESA to resale any gas in Spain. In the past, the Commission also accepted that a (limited in time) resale prohibition could be imposed on an electricity generator ( See case TRANSGAS-TURBOGAS, 1996 Commission Report on Competition Policy, p. 48 and p.135.).

## **Main developments between 1st January and 31<sup>st</sup> May 2000**

### **Eight Survey on State Aid in the EU**

In April 2000 the Commission approved the Eighth Survey on State Aid in the EU, COM (2000)205. As with previous editions, the coverage of the Survey was extended further and, for the first time, data on employment and training aid were included. Moreover separate analyses were carried out on CO<sub>2</sub> emission tax schemes that contain elements of State aid and certain categories of horizontal aid.

#### *Results of the Survey*

Overall results presented in Table 1 show that during the three year period 1996 to 1998, the Member States of the EU spent an average of € 93 billion a year in aid in the manufacturing, agriculture, fisheries, coal mining, transport, financial and other service sectors. This is an 11% decrease on the previous reporting period 1994 to 1996.

The manufacturing sector received an average of € 33 billion a year during the current period, a decrease of some 15% when compared with the previous reporting period. The gradually decreasing EU-wide trend in the award of aid observed in the Sixth and

Seventh Surveys has therefore been maintained.

However, as can be seen from Table 2, these overall figures conceal wide variations in aid levels and trends between countries.

When considering aid levels in relation to value added, they are currently highest in Greece and Italy and lowest in the United Kingdom and Sweden. The spread is remarkable: in Greece, aid is seven times higher than in the UK. In regard to cohesion, a comparison between three of the four largest economies and the four Cohesion countries – Greece, Ireland, Portugal and Spain – also illustrates important differences. Manufacturing aid in Germany, France and Italy, although having dropped slightly from the 80 percent share during the previous period, still accounts for 76 per cent of all manufacturing aid. At the same time the share of aid that is granted in the Cohesion countries increased, albeit marginally from 8 to 9 percent of manufacturing aid.

Remarkable differences between Member States are also to be seen when the different objectives and forms of aid are considered. At the EU level regional aid represents almost

60% of total aid to manufacturing. However its share at Member State level varies from one to 96% depending upon the country. Overall, the amount of aid granted to manufacturing for one-off ad-hoc measures to assist individual firms has continued to decrease and now amounts to 4% of all manufacturing aid in the Union. At the same time accompanying changes in the distribution of manufacturing aid between horizontal and regional objectives have been observed. It appears that with the exception of Germany, Italy and Greece, all Member States are gradually shifting resources away from sectorial, ad-hoc aid, towards horizontal objectives. There is also a perceptible shift of resources towards regional aid with absolute increases being seen in ten Member States.

#### *Conclusions drawn by the Commission*

Clearly in view of the still very high levels of State aid, the strict and rigorous control of State aid will be maintained. However given the very different patterns in the award of aid that are found across the EU, the Commission's response will be suitably nuanced.

- Increasing transparency  
User-friendly access to information on the Commission's state aid policy will be reinforced by a state aid register. It is also being considered whether a



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scoreboard could further improve transparency;

- Modernising the state aid control rules

The frameworks for environmental aid and employment aid are under revision. Legislation is being prepared to exempt certain categories of State aid - like aid for small and medium enterprises or training aid from notification requirements. Such group exemptions should ensure a

reduced level of administrative effort on the part of Member States and the Commission, thereby allowing a greater focus on more complex areas of state aid control;

- Enforcing state aid control effectively outside the European Union Enforcement of the strict state aid control provisions contained in the Europe Agreements signed with the candidate countries will be increased through the

finalising of implementing rules for these provisions.

- Faster recovery of illegal aid  
Particular importance will be attached to a more speedy recovery of aid which the Commission has declared incompatible with the EC Treaty.

The Survey may be consulted on DG COMP's homepage at: <http://europa.eu.int/en/comm/dg4/lawaid/en/rap8.htm>.

Table 1

### Overall national aid in the European Union 1994-1996 and 1996-1998 in billion euro

	1994-1996	1996-1998
<b>Overall national aid</b>	<i>104,2</i>	<b>93.0</b>
<i>Of which:</i>		
<i>Manufacturing sector</i>	<i>38,5</i>	<b>32.6</b>
<i>Agriculture</i>	<i>14,5</i>	<b>13.3</b>
<i>Fisheries</i>	<i>0,3</i>	<b>0.3</b>
<i>Coal mining</i>	<i>9,1</i>	<b>7.2</b>
<i>Transport</i>	<i>36,7</i>	<b>32.1</b>
<i>Financial Services</i>	<i>2,0</i>	<b>3.3</b>
<i>Tourism</i>	<i>0,3</i>	<b>0.2</b>
<i>Media and Culture</i>	<i>0,6</i>	<b>0.7</b>
<i>Employment*</i>	<i>1,1</i>	<b>1.4</b>
<i>Training*</i>	<i>0,8</i>	<b>0.9</b>
<i>Other Services</i>	<i>0,3</i>	<b>0.9</b>

\*Data incomplete for 1994-1996



## ➤ STATE AID

Table 2  
**State aid to the manufacturing sector**  
**Annual averages 1994-1996 and 1996-1998**

	In per cent of value added		In euro per person employed		In million euro	
	1994-1996	1996-1998	1994-1996	1996-1998	1994-1996	1996-1998
<b>Austria</b>	1,3	1,4	654	719	455	495
<b>Belgium</b>	2,5	1,9	1376	1093	931	732
<b>Denmark</b>	2,6	2,9	1252	1433	607	712
<b>Germany</b>	3,8	2,6	1941	1434	16201	11463
-Old Länder	:	:	451	435	3080	2856
-New Länder	:	:	8783	6021	13121	8607
<b>Greece</b>	4,8	4,9	925	997	592	616
<b>Spain</b>	2,3	2,1	769	691	1883	1800
<b>Finland</b>	1,6	1,6	928	959	366	391
<b>France</b>	1,7	2,0	895	1131	3607	4481
<b>Ireland</b>	1,3	1,9	909	1458	240	416
<b>Italy</b>	5,5	4,4	2419	1955	11040	8864
<b>Luxembourg</b>	2,2	2,3	1400	1476	46	48
<b>Netherlands</b>	1,1	1,2	702	735	602	629
<b>Portugal</b>	1,4	1,0	263	188	272	195
<b>Sweden</b>	0,8	0,8	421	441	330	344
<b>United Kingdom</b>	0,6	0,7	317	334	1358	1454
<b>EUR 15</b>	2,8	2,3	1292	1113	38531	32639

Averages in 1997 prices



**Germany - The Commission authorizes the special tax treatment of certain sectors of the economy in connection with the continuation of the ecological tax reform**

On 15 February 2000, the Commission decided to authorise the continued ecological tax reform in Germany under state aid rules. The Commission has concluded that the special tax treatment of certain sectors of the economy, notified by the German Government under the state aid rules in connection with the continuation of the ecological tax reform, is compatible with the EC Treaty. It has decided to authorise the special rules up to the year 2002 under the Community guidelines on state aid for environmental protection and on the basis of its existing practice and the Community's environmental policy.

The Commission approved the introduction of the ecotax in Germany in April 1999, in so far as it was covered by the state aid rules. It should be borne in mind that a general increase in, or the introduction of, energy taxes is not in itself an aid measure requiring authorisation. However, exemptions from any such general tax in the form of reduced tax rates or refunds may have to be regarded as aid if they favour certain undertakings or the production of certain goods. The Commission took the view in April 1999 that this was in principle the case as regards the

reductions of up to 20% in tax rates provided for under the ecotax law for firms in manufacturing industry, agriculture and forestry and for rail transport services.

This decision covers the second stage of the ecological tax reform. The main features of the extension are the gradual annual increase in electricity tax and in fuel tax. The reduced tax rates are being maintained under the increased electricity tax. This means that the relevant firms will receive a higher tax exemption; however, they will also pay higher taxes than before. Furthermore, as part of the increase in electricity tax, a growing number of firms will pay the reduced rates and thus be covered by the partial tax exemption. For this reason, the increase in electricity tax also requires authorisation under the state aid rules. The same applies to the tax refund proposal for manufacturing industry.

The increase in fuel tax will in principle have to be borne by all firms; however, public transport will be subject to only half of the additional levy. This too, in the Commission's view, amounts to aid.

The reduction in mineral oil tax for low-sulphur fuels and the exemption granted on electricity generated for their own consumption by plants of up to 2 MW are, in the Commission's view, not aid.

As in April 1999, the Commission has, however, decided not to raise any objections to the aid provisions, because they are in line with the Community guidelines on state aid for environmental protection, its previous practice on similar schemes in other Member States and the Community's environmental policy.

The Commission is thus essentially maintaining the position it took in its April 1999 decision: the 1994 Community guidelines on state aid for environmental protection (OJ C 72/03 of 10 March 1994) recognise that the introduction of environmental taxes and charges can involve state aid because some firms may not be able to stand the extra financial burden immediately and require temporary relief. Such aid in the form of relief from environmental taxes may under certain conditions, and taking each case on its merits, be approved in exceptional cases. Having considered all the circumstances of the case, and taking into account its previous practice and the Community's environmental policy, the Commission has decided that the conditions for approval are met. In so deciding, it has taken account of the fact that at present not all Member States of the Community or non-Community countries impose such energy taxes and that the introduction of environmental taxes therefore affects the competitive position of the relevant firms.



The Commission has also based its decision on the fact that the authorisation period remains unchanged as compared with the original authorisation period. The Federal Government has renewed its commitment to re-notify the measures for approval no later than three years after the entry into force of the ecotax, i.e. before 1 April 2002, and, in the Electricity Tax Law, has set a similar limit to the period of applicability of the aid measures.

The Commission has also noted that the Federal Government assumes that German industry will stick to the voluntary agreements entered into previously and will in the years ahead continue its efforts to reduce energy consumption and increase energy efficiency. Lastly, the Commission has taken account of the fact that the German scheme is in line with the Commission's 1997 proposal for a Council Directive restructuring the Community framework for the taxation of energy products.

This decision does not cover the proposed exemption of certain gas and steam turbine power stations from mineral oil tax. This measure will be dealt with later in a separate Commission decision

### **Denmark – Commission approves tradable CO<sub>2</sub> emission permits for the electricity sector in Denmark for the period 2001-2003**

On 29 March the Commission decided not to object to a scheme concerning tradable CO<sub>2</sub> emission permits for the electricity sector in Denmark. The Commission welcomes the Danish emissions trading scheme, since it is important for the EU to gather experience ahead of the International Emissions Trading to be introduced under the Kyoto Protocol in 2008. However, the Commission considers that giving producers emission permits without compensation constitutes State aid under Article 87(1) of the EC Treaty. It can approve the State aid on the basis of Article 87(3)(c) of the EC Treaty, since the scheme will contribute to the development of environmental protection. The Commission makes clear that this decision is without prejudice to future decisions on methods for allocating tradable emission permits. This applies for a possible revised version of the Danish scheme allowing trade in permits between different countries, for a new scheme to apply after 2003 and for schemes subsequently developed in other Member States.

The system is based on an annual, national ceiling for the allowable emissions from electricity production. It is limited to the electricity sector, since it alone is responsible for about 40% of the total emissions of CO<sub>2</sub> in

Denmark. The ceiling is reduced each year, going from 22 million tonnes in 2001 to 21 million tonnes in 2002 and 20 million tonnes in 2003, when the scheme ends. The national quota is allocated to existing electricity producers for free, based on their historical emissions in the period 1994–1998 (grandfathering). The basic quotas allocated will only cover about 70% of the historical emissions of each electricity producer.

The idea behind a system with tradable emission permits is that the incentive to reduce emissions should be strongest where the cost of doing so is the lowest. In theory, a producer able to reduce emissions at a cost per tonne which is lower than the amount of the fine due for exceeding the quota, i.e. DKK 40/tonne (about € 5.40), will do so. The excess permits can then be sold to another producer, for whom it is cheaper to buy permits than to pay the fine. A producer can also save permits that are not used in one year for use the next year (banking). Each year, the quota of each producer is adjusted taking account of the national quota for the particular year, the transactions made and whether emission permits have been saved.

In its assessment, the Commission has emphasised the importance of safeguarding the freedom of establishment. Thus, the Danish authorities will ensure that if there are new entrants on the Danish electricity market during the operation of the



scheme, these will receive quotas based on criteria that are objective and non-discriminatory in relation to those applied to incumbent producers. The criteria are subject to approval by the Commission.

The Danish scheme should be seen against the background of the Kyoto Protocol to the UN Framework Convention on Climate Change from December 1997. Under the Kyoto Protocol, the European Community committed itself to reducing its emissions of greenhouse gases by 8% during the period 2008–2012 in comparison with their levels in 1990. A burden-sharing has been agreed internally in the EU, which for Denmark implies a reduction by 21% in the period 2008-2012 compared with 1990.

**France et Pays-Bas - La Commission autorise des aides en faveur du programme de recherche ITEA.**

Le 11 avril, la Commission a autorisé les aides notifiées par la France et les Pays-Bas en faveur du programme de recherche ITEA (« *Information Technology for European Advancement* »).

ITEA est un programme Eureka de recherche et développement dans le domaine des technologies logicielles. Il vise à acquérir des connaissances dans différents domaines (composants logiciels, architectures, spécifications de standards, spécifications des interfaces, etc.) et concerne tout particulièrement le dévelop-

pement de technologies pour les « briques logicielles » (« middleware »).

Douze pays, dont onze de l'Union Européenne, ont manifesté leur intérêt pour ce programme. Conformément aux règles Eureka, ITEA sera mené en collaboration transfrontalière au niveau européen, et impliquera une collaboration effective entre industriels et centres publics de recherche.

Les autorités françaises et néerlandaises soutiendront les projets de R&D menés dans le cadre d'ITEA en apportant des aides dont l'intensité maximale sera de 50%. Le programme ITEA durera jusqu'en juin 2007 et aura un budget total d'environ 3200 millions d'Euros. Les aides apportées par les autorités françaises et néerlandaises au titre des régimes approuvés par la Commission s'élèveront au maximum à 274 millions d'Euros et 95 millions d'Euros respectivement.

La Commission a analysé les régimes d'aides notifiés par la France et les Pays-Bas dans le cadre du programme ITEA conformément à l'Encadrement communautaire des aides d'Etat à la Recherche et au développement<sup>87</sup>.

Les travaux financés dans le cadre d'ITEA sont de la recherche industrielle ou des développements pré-concurrentiels

au sens de l'Encadrement. ITEA s'inscrit dans les objectifs du Cinquième Programme Cadre de Recherche et Développement, et plus particulièrement dans les objectifs du programme spécifique « Société de l'information conviviale<sup>88</sup> ». Les régimes notifiés par la France et les Pays-Bas pouvaient par conséquent bénéficier du bonus d'intensité de 25% prévu au point 5.10.3 de l'Encadrement pour les projets s'inscrivant dans le Programme-cadre communautaire avec collaboration transfrontalière et diffusion des résultats : une intensité d'aide de 50% pouvait donc être autorisée.

La Commission, qui a souligné à de nombreuses reprises que l'industrie des technologies de l'information et des communications jouerait un rôle crucial pour la société de l'information au 21ème siècle, considère qu'un programme de recherche comme ITEA contribue à l'intérêt commun. Elle a conclu que les dispositifs d'aide français et néerlandais étaient en tout point conformes à l'Encadrement communautaire des aides d'Etat à la Recherche et au Développement et pouvaient par conséquent être autorisés.

<sup>87</sup> JO C 45, 17.2.1996, p.5

<sup>88</sup> JO L64 du 12 mars 1999, p.20





**Germany - The Commission decides that the aid granted from 1993 to 1997 in favour of System Microelectronic Innovation GmbH (SMI) is incompatible with the Treaty and has to be recovered. In order to ensure its effective recovery, it decides that the aid will have to be recovered not only from the present owner of the assets of SMI (Microelectronic Design & Development GmbH - MD&D) but also from any other companies to which SMI's assets have been or will be transferred.**

The European Commission has decided to close the formal investigation procedure in respect of State aid measures amounting to DEM 140,100,000 awarded to System Microelectronic Innovation GmbH (SMI), Frankfurt/Oder/Brandenburg (Germany) with a final negative decision. As these measures are incompatible with the Treaty, the aid has to be recovered.

On 5 August 1997, the Commission initiated a formal investigation procedure against unnotified aid measures in favour of SMI. The company filed for bankruptcy already in April 1997. The main activity of SMI was the production of customer specific microchips. The bankruptcy administrator decided to continue the company's operation. A new company, named Silicium Microelektronik Integration GmbH Frankfurt/Oder (SIMI),

was founded on 30 June 1997 to secure the going-concern of SMI. All shares of SIMI were owned by the company in bankruptcy SMI. On 1 July 1997 the administrator also founded a 100 % subsidiary of SIMI, named Microelectronic Design & Development GmbH (MD&D), whose intended activities were in the field of consulting, marketing, development and design of microelectronic products and services. After several fruitless attempts of the Land Brandenburg to sell MD&D to a private investor, the negotiations with MEGAXESS Inc from the USA, were finally successful. In July 1999 MD&D bought the shares of SIMI and the assets of SMI.

Grants of a total DEM 64,800,000 for investment purposes by the Treuhandanstalt and a loan of DEM 70,300,000 of the Land Brandenburg for loss coverage from 1993 until 1997 were awarded in favour of SMI. A further DEM 4,000,000 of the Land and DEM 1,000,000 of the THA was awarded in favour of SIMI, the subsidiary of SMI.

As the aid measures were neither covered by approved regimes nor exemptable on the basis of the provisions of the Treaty, the aid measures had to be considered as being incompatible and therefore have to be recovered from the beneficiaries.

The Commission further decided that the aid measures in favour

of SMI and SIMI have to be recovered from MD&D. This company still benefits from the aid because it still uses the assets of the bankrupt company, SMI, thus taking advantage from the aid formally granted to SMI and SIMI.

Furthermore, Germany should be prevented from evading the consequences of the recovery decision by setting up a system of successive subsidiaries like it did in this case. Therefore, the Commission decided also to extend its decision to aid measures in favour of any other undertaking to which SMI's, SIMI's or MD&D's assets have been or will be transferred.

#### **Nouvelles Décisions sur les cartes des aides d'Etat à finalité régionale pour la période 2000-2006**

The mapping exercise that the Commission started some 2 years ago is now more than half way. At the end of May the Commission approved the full map of areas where national regional aid may be granted for nine Member States. These are Denmark, France, Germany, Greece, Ireland, Finland, Sweden, Spain and Austria. The Commission also approved the Article 87(3)(a) areas of Italy and Portugal.

Although good progress was made during the last months, the proposals submitted by some Member States have not allowed the Commission to approve all maps. Procedures according to



Article 88(2) of the Treaty are pending on the Belgium and on the Dutch map, and on the Italian and Portuguese Article 87(3)(c) areas. The assessment for Luxembourg and the United Kingdom is not yet finalised.

### **Germany**

On 14 March the Commission approved the remaining part of the German regional aid map for the period 1 January 2000 until 31 December 2003. The decision declares the City of Berlin and several regions in West-Germany eligible under Article 87(3)(c) EC-Treaty and lays down the respective maximum aid intensities relevant for regional aid. Thus, the city of Berlin may receive 20% (in net grant equivalent), the region of Hameln-Pyrmont, the city of Passau and the city of Hof 10% (in net grant equivalent) and the remaining proposed labour market regions in West-Germany 18% (in net grant equivalent). However, Germany declared not to exceed 20 % gross in the city of Berlin and 18 % gross for the relevant labour market regions in West Germany.

In July last year, the Commission had already decided that the five new Länder are eligible under Article 87(3)(a) EC-Treaty and their respective aid intensities were laid down for the period 1 January 2000 until 31 December 2003.

### **Austria**

On 30 May, the Commission approved the Austrian regional aid map for the period 1 January 2000 until 31 December 2006. Burgenland is the only region to qualify under Article 87(3)(a) EC-Treaty. Therefore, in some parts of this region a maximum aid intensity of 35% (in net grant equivalent) is permitted. Regions falling under Article 87(3)(c) EC-Treaty have either been selected on a NUTS III basis or correspond to areas eligible under the Structural Funds. Their respective maximum aid intensities have been chosen in order to reflect the seriousness and intensity of the regional problem and vary between 12,5% and 20% (in net grant equivalent).

### **Sweden**

On 29 March, the Commission approved the Swedish regional aid map for the period 2000 to 2006. The Swedish Article 87(3)(c) EC region is one single, compact zone located in the North of the country. It has a population of 1.4 million (15.9% of the total population of Sweden). In the most remote part of the (c)-area, the maximum aid intensity ceiling is set at 30% nge. This area has a population density of 1.9 inhabitants per square kilometre and qualifies as a low population density area under paragraph 3.10.4 of the Guidelines on national regional aid <sup>89</sup>. In the rest of the (c)-

region, the aid ceiling is set at 17.5% nge for large enterprises and 17.5% nge + 10% gge for SMEs.

On 3 May, the Commission also approved the Swedish regional development aid scheme. This scheme establishes a comprehensive package of aid measures to support the development of enterprises located in the Swedish Article 87(3)(c) regions. Under the scheme, the Swedish authorities will provide aid for general business investment as well as for advisory services for SMEs, research and development projects and training actions.

### **France**

The Commission approved the French regional aid map on 1 March. 36.7% of the French population live in assisted areas. 2.7% live in the French "Département d'Outre-mer", the only French Article 87(3)(a) regions, where regional aid can amount to 65% net for large companies and 75% net for SMEs.

The Article 87(3)(c) areas were selected according to a method which was based on the French Travel-to-Work-Areas but also took account of the designated Objective 2 areas. Regional aid to large companies in the assisted areas may not exceed 20% net and 15% in those areas which were limited to 15% in 1999. In the Doubs and Upper-Rhin, the aid intensity is limited to 10% net. Aid for SMEs can

<sup>89</sup> OJ C 74, 10.3.1998, p. 9



benefit from a majoration of 10 gross percentage points.

### *Spain*

La Commission européenne a approuvé la carte espagnole des aides à finalité régionale dont le taux de population couverte qui ne dépasse pas les 79,2% du total de la population espagnole. Parmi la population couverte, 58,4% se situe dans les régions relevant de l'article 87.3.a) car le PIB/habitant y est inférieur à 75 % de celui correspondant à la moyenne communautaire et 20,8% se situe dans des régions en meilleure situation relative qui tombent sous le coup de l'article 87.3.c).

Les plafonds régionaux des intensités des aides régionales seront (en termes d'équivalent subvention net) de 50% dans les

régions de l'Andalucía, les Canarias et l'Extremadura; de 40% dans les régions de Galicia, Asturias, Castilla y León (sauf les provinces de Palencia et Segovia où le plafond sera de 37% et les provinces de Burgos et de Valladolid où il sera de 35%), Castilla - La Mancha (sauf la province de Guadalajara où il sera de 30%), Comunidad Valenciana (sauf les provinces de Valencia où il sera de 37% et de où il sera de 35%), Murcia, Ceuta et Melilla. Aux plafonds indiqués, s'ajoutera, dans le cas des PME un supplément de 15 points bruts de pourcentage.

Quant aux régions en meilleure situation relative et relevant donc de l'article 87.3.c), les intensités seront de 20% sauf dans les communes proposées de la province de Lleida où elle s'élèvera à 10%, dans la

province de Teruel où elle s'élèvera à 30% ESN en raison de la faible densité de population et dans la région de Cantabria où elle commencera à 40% pour diminuer jusqu'à 20% sur une période de quatre ans en raison du fait qu'il s'agit d'une région en transition du statut de région 87.3.a) au statut de région 87.3.c). Aux plafonds indiqués, s'ajoutera, dans le cas des PME un supplément de 10 point bruts de pourcentage.

### *Finland*

By letter dated March 16, the Commission informed Finland of its approval of the increase (compared to the ones approved in October 1999) of the intensity rates for large firms in the Article 87(3)(c) regions outside the Aland islands (now 20% NGE and 16% NGE).



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## ➤ INFORMATION SECTION

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Task Force 'Aides dans les nouveaux Länder'	<i>Conrado TROMP</i>	2960286



## Documentation...

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

### SPEECHES AND ARTICLES

"Who will be in the driver's seat?" - Mario MONTI - Forum Europe Conference - Brussels - 11.05.2000

Presentation of the XXIXth report on competition policy - Mario MONTI - European Parliament - Committee on Economic and Monetary Affairs - 08.05.2000

The Role of EC Competition Policy in the Liberalisation of EU Energy Markets - Angel TRADACETE COCERA - European Energy Millenium Forum - Brussels - 27.04.2000

Sport and Competition - Mario MONTI - Excerpts of a speech given at a Commission-organised conference on sports - Brussels - 17.04.2000  
The Community's State Aid Policy - Mario MONTI - Conference of the 16 Ministers of Economic Affairs of the German Länder - Brussels - 30.03.2000

Liberalizzazioni e Concorrenza - Mario MONTI - Commissioni Congiunte Bilancio, Industria e Affari Costituzionali del Senato - Roma - 28.03.2000  
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Except if otherwise indicated, these publications are available through the Office for Official Publications of the European Communities or its sales offices (see last page). Use Catalogue number to order. Publications marked with an asterisk (\*) are also available on DG Competition web site: <http://europa.eu.int/comm/dg04/dg4/home.htm>

### LEGISLATION

#### Competition law in the European Communities-Volume IA-Rules applicable to undertakings

Situation at 30 June 1994; this publication contains the text of all legislative acts relevant to Articles 85, 86 and 90.

Catalogue No: CM-29-93-A01-xx-C (xx=language code: ES, DA, DE, EL, EN, FR, IT, NL, PT).

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Catalogue No: CM-88-95-436-xx-C (xx=language code: ES, DA, DE, EL, EN, FR, IT, NL, PT).

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Situation at 30 June 1998; this publication contains the text of all legislative acts relevant to Articles 42, 77, 90, 92 to 94.

Catalogue No: PD-15-98-875-xx-C (xx=language code: ES, DA, DE; EL, EN, FR, IT, NL, PT, SV, FI)



**Competition law in the EC-  
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**Application of EC State aid law  
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(96) 721- (Ed. 1997)**

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**Final report of the multimodal  
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Catalogue No: CV-11-98-803-EN-C

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Catalogue No: CM-94-96-590-EN-C

**Competition aspects of access  
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December 1995 (M. Cave, P.  
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Catalogue No: CM-94-96-582-EN-C

**Community Competition Policy in  
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contains Directives under art 90,  
Decisions under Regulation 17  
and under the Merger Regulation  
as well as relevant Judgements of  
the Court of Justice.**

- Copies available through DG  
COMP-C-1 (tel. +322-2968623,  
2968622, fax +322-2969819).

**Brochure explicative sur les  
modalités d'application du  
Règlement (CE) N° 1475/95 de la  
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catégories d'accords de  
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et d'après vente de véhicules  
automobiles - Copies available  
through DG COMP-F-2 (tel. +322-  
2951880, 2950479, fax. +322-  
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**COMPETITION DECISIONS**

**Recueil des décisions de la  
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Catalogue No: CM-80-93-290-xx-C (xx=ES, DA, DE, EL, EN, FR, IT, NL, PT)

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

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### **Video: Fair Competition in Europe-Examination of current**

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### **Communication de la Commission: Les services d'intérêt général en Europe (Ed. 1996)**

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### **Services de télécommunication en Europe: statistiques en bref, Commerce, services et transports, 1/1996**

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### **New industrial economics and experiences from European merger control: New lessons about collective dominance ? (Ed. 1995)**

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**1<sup>st</sup> February 2000 to**  
**31<sup>st</sup> May 2000**

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

**27.05.2000**

**C 149** 2000/C 149-0029  
Judgment of the Court of First Instance of 30 March 2000 in Case T-65/96: Kish Glass & Co. Ltd v Commission of the European Communities [Competition - Float glass - Rights of defence and procedural rights of the complainant - Product market and geographical market - Article 86 of the EC Treaty (now Article 82 EC)]

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between national authorities and liner conferences - Liner conference insisting on application of the agreement - Fighting ships - Loyalty rebates - Rights of defence - Fines - Assessment criteria)

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**23.05.2000**

**C 143** 2000/C 143-0003  
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**13.05.2000**

**C 135** 2000/C 135-0020 Case T-45/00: Action brought on 29 February 2000 by the Conseil National des Professions de l'Automobile (C.N.P.A.) and Others against the Commission of the European Communities

**29.04.2000**

**C 122** 2000/C 122-0018  
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Cimenteries CBR and Others v Commission of the European Communities (Competition - Article 85(1) of the EC Treaty (now Article 81(1) EC) Cement market - Rights of the defence - Access to the file - Single and continuous infringement - General agreement and measures of implementation - Liability for an infringement - Evidence of participation in the general agreement and measures of implementation - Links between the general agreement and the measures of implementation as regards objects and participants - Fine - Determination of the amount)

**C 121** 2000/C 121-0014 Notice published pursuant to Article 19(3) of Council Regulation No 17 concerning case COMP/C.2 - 37.576 - UEFA's broadcasting rules [Text with EEA relevance]

**27.04.2000**

**C 118** 2000/C 118-0003 Competition rules relating to horizontal cooperation agreements - Communication pursuant to Article 5 of Council Regulation (EEC) No 2821/71 of 20 December 1971 on the application of Article 81(3) of the Treaty to categories of agreements, decisions and concerted practices modified by Regulation (EEC) No 2743/72 [Text with EEA relevance]

**26.04.2000**

**C 117** 2000/C 117-0019 Opinion of the Economic and Social Committee on the Commission preliminary draft

Regulation on the application of Article 81(3) of the EC Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) pursuant to Council Regulation (EEC) No 479/92

**20.04.2000**

**L 100** 2000/L 100-0024 Commission Regulation (EC) No 823/2000 of 19 April 2000 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) [Text with EEA relevance]

**C 114** 2000/C 114-0003 Notification of a joint venture (Case COMP/F-1/37.846 - Neles/VIB) [Text with EEA relevance]

**19.04.2000**

**C 112** 2000/C 112-0007 Notification of a joint venture (Case COMP/37.854/E-2) [Text with EEA relevance]

**C 112** 2000/C 112-0007 Notification of agreements to set up a joint venture (Case COMP/E-2/37.841) [Text with EEA relevance]

**08.04.2000**

**C 102** 2000/C 102-0018 Judgment of the Court of First Instance of 13 December 1999 in Joined Cases T-190/95 and T-45/96, Société de Distribution de Mécaniques et d'Automobiles (Sodima) v Commission of the European Communities (Competition - Distribution of motor-vehicles - Examination of complaints - Action for declaration for failure to act, for annulment and for compensation - Inadmissibility)

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Yang Shipping Co. Ltd v Commission of the European Communities (Competition - Payment of a fine - Bank guarantee - Proceedings for interim relief - Urgency - Interim measures)

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**C 102** 2000/C 102-0020 Judgment of the Court of First Instance of 17 February 2000 in Case T-241/97: Stork Amsterdam BV v Commission of the European Communities (Competition - Administrative procedure - Examination of complaints - Infringement of Article 85 of the EC Treaty (now Article 81 EC)- Comfort letters - Reopening the procedure - Statement of reasons - Duty to provide - Extent - Cooperation agreement - Exclusive mutual supply clause - No-compete clause)

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**15.03.2000**

**C 74** 2000/C 074-0005  
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37.775 - CEMEP)Text with  
EEA relevance

**14.03.2000**

**C 73** 2000/C 073-0006  
Notification of a joint venture  
(Case COMP/F-1/37.802 -  
Dynamit Nobel - Orica)Text  
with EEA relevance

**C 73** 2000/C 073-0006  
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**03.03.2000**

**L 58** 2000/L 058-0016  
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W)Text with EEA relevance  
(notified under document  
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**22.02.2000**

**L 49** 2000/L 049-0037  
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Anheuser-Busch Incorporated -  
Scottish & Newcastle) (notified  
under document number  
C(1999) 4499)

**19.02.2000**

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39/96 and T-123/96: Service  
pour le Groupement  
d'Acquisitions (SGA) v  
Commission of the European  
Communities (Competition -  
Distribution of motor vehicles -  
Examination of complaints -  
Action for a declaration of  
failure to act, for annulment and  
for compensation)

**17.02.2000**

**C 44** 2000/C 044-0004  
Notification of an agreement  
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certain Cross-border  
Parcels)Text with EEA  
relevance

**14.02.2000**

**L 39** 2000/L 039-0001  
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**03.02.2000**

**C 31** 2000/C 031-0003  
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BASF-Sonatrach)Text with EEA  
relevance

**CONTROL OF CONCENTRATIONS /  
MERGER PROCEDURE**

**30.05.2000**

**C 150** 2000/C 150-0009 Prior  
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(Case COMP/M.1966 -  
Phillips/Chevron/JV)

**27.05.2000**

**C 149** 2000/C 149-0030  
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Instance of 22 March 2000 in  
Joined Cases T-125/97 and T-  
127/97: The Coca-Cola  
Company and Coca-Cola

Enterprises Inc. v Commission  
of the European Communities  
(Competition - Regulation  
(EEC) No 4064/89 - Decision  
declaring a concentration  
compatible with the common  
market - Action for annulment -  
Statement of reasons -  
Admissibility)

**C 148** 2000/C 148-0020 Non-  
opposition to a notified  
concentration (Case  
COMP/M.1910 -

Meritanordbanken/Unidanmark)

**C 148** 2000/C 148-0021 Prior  
notification of a concentration  
(Case COMP/M.2004 -  
Investcorp/Chase Capital  
Investments/Gerresheimer  
Group)

**26.05.2000**

**C 147** 2000/C 147-0005 Prior  
notification of a concentration  
(Case COMP/M.1974 -  
Compagnie de Saint-  
Gobain/Raab Karcher)

**C 147** 2000/C 147-0006 Prior  
notification of a concentration  
(Case COMP/M.1963 - Industri  
Kapital/Perstorp)

**C 147** 2000/C 147-0007 Non-  
opposition to a notified  
concentration (Case  
COMP/M.1687 -  
Adecco/Olsten)

**25.05.2000**

**C 145** 2000/C 145-0004 Non-  
opposition to a notified  
concentration (Case  
COMP/M.1842 -  
Vattenfall/Hew)

**C 145** 2000/C 145-0003 Prior  
notification of a concentration  
(Case COMP/JV.40 -  
Lagardère/Canal+ and  
COMP/JV.47 -  
Lagardère/Canal+/Liberty  
Media)

**24.05.2000**

**C 144** 2000/C 144-0008 Non-  
opposition to a notified  
concentration (Case



COMP/M.1800 - Marconi/Bosch Public Network)

**C 144** 2000/C 144-0007 Prior notification of a concentration (Case COMP/M.1938 - BT/Telfort)

**C 144** 2000/C 144-0006 Prior notification of a concentration (Case COMP/M.1932 - BASF/American Cyanamid)

**23.05.2000**

**C 143** 2000/C 143-0005 Initiation of proceedings (Case COMP/M.1882 - Pirelli/BICC)

**C 143** 2000/C 143-0004 Initiation of proceedings (Case COMP/M.1741 - MCI Worldcom/Sprint)

**C 143** 2000/C 143-0005 Initiation of proceedings (Case COMP/M.1806 - Astra Zeneca/Novartis)

**C 143** 2000/C 143-0004 Non-opposition to a notified concentration (Case COMP/M.1835 - Monsanto/Pharmacia & Upjohn)

**20.05.2000**

**C 142** 2000/C 142-0040 Prior notification of a concentration (Case COMP/M.1916 - RTL NEWMEDIA/Primus-Online)

**C 142** 2000/C 142-0039 Prior notification of a concentration (Case COMP/M.1950 - Toyota Automatic Loom Works/BT Industries)

**C 142** 2000/C 142-0038 Renotification of a previously notified concentration (Case COMP/JV.46 - Callahan Invest/Kabel Nordrhein-Westfalen)

**C 142** 2000/C 142-0037 Prior notification of a concentration (Case COMP/M.1947 - ABN AMRO Lease Holding/Dial Group)

**C 142** 2000/C 142-0036 Non-opposition to a notified concentration (Case COMP/M.1796 - Bayer/Lyondell)

**C 142** 2000/C 142-0036 Non-opposition to a notified concentration (Case COMP/M.1866 - Preussag/Hebel)

**C 142** 2000/C 142-0035 Non-opposition to a notified concentration (Case COMP/M.1751 - Shell/BASF/JV - Project Nicole)

**19.05.2000**

**C 141** 2000/C 141-0019 Non-opposition to a notified concentration (Case COMP/M.1795 - Vodafone Air-touch/Mannesmann)

**C 141** 2000/C 141-0018 Prior notification of a concentration (Case COMP/M.1933 - Citigroup/Flender)

**C 141** 2000/C 141-0017 Prior notification of a concentration (Case COMP/M.1858 - Thomson-CSF/Racal (II))

**18.05.2000**

**C 139** 2000/C 139-0014 Prior notification of a concentration (Case COMP/M.1989 - Winterthur/Colonial)

**C 139** 2000/C 139-0015 Non-opposition to a notified concentration (Case COMP/M.1760 - Mannesmann/Orange)

**17.05.2000**

**C 138** 2000/C 138-0006 Prior notification of a concentration (Case COMP/M.1975 - Deutsche Bank/Eurobank/Lamda Development/JV)

**C 138** 2000/C 138-0007 Non-opposition to a notified concentration (Case COMP/M.1876 - Kohlberg Kravis & Roberts/Wassall/Zumtobel)

**C 138** 2000/C 138-0007 Non-opposition to a notified concentration (Case COMP/M.1911 - Dow/BSL)

**16.05.2000**

**C 136** 2000/C 136-0006 Prior notification of a concentration (Case COMP/M.1646 - CGD/Partest/BCP/SAirGroup/P GA)

**C 136** 2000/C 136-0005 Prior notification of a concentration (Case COMP/M.1970 - Johnson & Johnson/Mercury Asset Management/Agora Healthcare Services JV)

**C 136** 2000/C 136-0004 Prior notification of a concentration (Case COMP/M.1852 - Time Warner/EMI)

**13.05.2000**

**C 134** 2000/C 134-0015 Non-opposition to a notified concentration (Case COMP/M.1886 - CGU/Norwich Union)

**C 134** 2000/C 134-0015 Non-opposition to a notified concentration (Case COMP/M.1904 - Carrefour/Gruppo GS)

**C 134** 2000/C 134-0014 Prior notification of a concentration (Case COMP/M.1957 - Telenor Media/VIAG Interkom)

**C 134** 2000/C 134-0013 Non-opposition to a notified concentration (Case COMP/M.1793 - Voith/Siemens/JV)

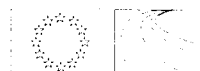
**C 134** 2000/C 134-0013 Non-opposition to a notified concentration (Case COMP/M.1889 - CLT-UFA/Canal+/VOX)

**11.05.2000**

**C 130** 2000/C 130-0011 Non-opposition to a notified concentration (Case COMP/M.1871 - Arrow Electronics/Tekelec)

**C 130** 2000/C 130-0008 Prior notification of a concentration (Case COMP/M.1845 - AOL/Time Warner)

**C 130** 2000/C 130-0007 Prior notification of a concentration



(Case COMP/M.1898 - TUI Group/GTT Holding)

**C 130** 2000/C 130-0010 Prior notification of a concentration (Case COMP/M.1968 - Solectron/Nortel)

**C 130** 2000/C 130-0011 Non-opposition to a notified concentration (Case COMP/M.1571 - New Holland/Case)

**C 130** 2000/C 130-0009 Prior notification of a concentration (Case COMP/M.1959 - Meritor/Arvin)

**04.05.2000**

**C 125** 2000/C 125-0010 Non-opposition to a notified concentration (Case COMP/JV.39 - Bertelsmann/Planeta/NEB)

**C 125** 2000/C 125-0010 Prior notification of a concentration (Case COMP/M.1944 - HSBC/CCF)

**C 125** 2000/C 125-0009 Prior notification of a concentration (Case COMP/M.1946 - Bellsouth/SBC)

**C 125** 2000/C 125-0008 Prior notification of a concentration (Case COMP/M.1929 - Magneti Marelli/Seima)

**C 125** 2000/C 125-0007 Prior notification of a concentration (Case COMP/M.1780 - LVMH/Prada/Fendi)

**03.05.2000**

**C 123** 2000/C 123-0043 Prior notification of a concentration (Case COMP/M.1819 and COMP/ECSC.1320 - Rheinbraun/OMV/Cokowi) [Text with EEA relevance]

**C 123** 2000/C 123-0042 Prior notification of a concentration (Case COMP/M.1960 - Carrefour/Marinopoulos) [Text with EEA relevance]

**C 123** 2000/C 123-0044 Prior notification of a concentration (Case COMP/M.1930 -

Ahlström/Andritz) [Text with EEA relevance]

**C 123** 2000/C 123-0045 Prior notification of a concentration (Case COMP/M.1948 - Techpack International/Valois) [Text with EEA relevance]

**C 123** 2000/C 123-0041 Prior notification of a concentration (Case COMP/M.1879 - Boeing/Hughes) [Text with EEA relevance]

**29.04.2000**

**C 121** 2000/C 121-0013 Prior notification of a concentration (Case COMP/M.1961 - NHS/MWCR) [Text with EEA relevance]

**26.04.2000**

**C 116** 2000/C 116-0004 Non-opposition to a notified concentration (Case COMP/JV.25 - Sony/Time Warner/CDNow) - Text with EEA relevance

**C 116** 2000/C 116-0003 Prior notification of a concentration (Case COMP/M.1956 - Ford/Autonova) - Text with EEA relevance

**20.04.2000**

**C 114** 2000/C 114-0004 Prior notification of a concentration (Case COMP/JV.46 - Callahan Invest/Kabel Nordrhein-Westfalen) [Text with EEA relevance]

**19.04.2000**

**C 112** 2000/C 112-0008 Prior notification of a concentration (Case COMP/M.1891 - BP Amoco/Castrol) [Text with EEA relevance]

**C 112** 2000/C 112-0011 Prior notification of a concentration (Case COMP/M.1919 - Alcoa/Cordant) [Text with EEA relevance]

**C 112** 2000/C 112-0006 Non-opposition to a notified concentration (Case COMP/M.1822 - Mobil/JV

Dissolution) [Text with EEA relevance]

**C 112** 2000/C 112-0009 Prior notification of a concentration (Case COMP/M.1901 - Cap Gemini/Ernst & Young) [Text with EEA relevance]

**C 112** 2000/C 112-0010 Prior notification of a concentration (Case COMP/M.1908 - Alcatel/Newbridge Networks) [Text with EEA relevance]

**C 112** 2000/C 112-0005 Renotification of a previously notified concentration (Case COMP/M.1895 - Ocean Group/Exel (NFC)) [Text with EEA relevance]

**C 112** 2000/C 112-0012 Prior notification of a concentration (Case COMP/M.1887 - Crédit Suisse First Boston/Gala Group) [Text with EEA relevance]

**15.04.2000**

**L 95** 2000/L 095-0034 Commission Decision of 28 July 1999 imposing fines for having supplied incorrect information in a notification submitted pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (Case No IV/M.1543 - Sanofi/Synthelabo) [Text with EEA relevance] (notified under document number C(1999) 2290)

**C 110** 2000/C 110-0045 Non-opposition to a notified concentration (Case COMP/JV.37 - BSKyB/KirchPayTV) [Text with EEA relevance]

**14.04.2000**

**C 108** 2000/C 108-0005 Prior notification of a concentration (Case COMP/M.1909 - Alstom/ABB Alstom Power) [Text with EEA relevance]

**C 108** 2000/C 108-0008 Non-opposition to a notified concentration (Case COMP/M.1831 - Deutsche Bank/Ciba)



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- C 108 2000/C 108-0008** Non-opposition to a notified concentration (Case COMP/M.1747 - Telekom Austria/Libro) [Text with EEA relevance]
- C 108 2000/C 108-0007** Prior notification of a concentration (Case COMP/M.1937 - Skandia Life/Diligentia) [Text with EEA relevance]
- C 108 2000/C 108-0006** Prior notification of a concentration (Case COMP/JV.45 - Bertelsmann AG/Kooperativa Förbundet (KF)/Bokus AB (BOL Nordic)) [Text with EEA relevance]
- 13.04.2000**
- L 93 2000/L 093-0001** Commission Decision of 22 September 1999 declaring a concentration to be incompatible with the common market and the EEA Agreement (Case IV/M.1524 - Airtours/First Choice) [Text with EEA relevance] . (notified under document number C(1999) 3022)
- C 105 2000/C 105-0003** Opinion of the Advisory Committee on Concentrations given at the 67th meeting on 9 September 1999 concerning a preliminary draft decision relating to Case IV/M.1524 - Airtours/First Choice
- 12.04.2000**
- C 104 2000/C 104-0005** Prior notification of a concentration (Case COMP/M.1878 - Pfizer/Warner-Lambert) [Text with EEA relevance]
- 08.04.2000**
- C 101 2000/C 101-0014** Prior notification of a concentration (Case COMP/M.1935 - Rabobank/Gilde/Norit) [Text with EEA relevance]
- C 101 2000/C 101-0013** Non-opposition to a notified concentration (Case COMP/M.1803 - Electrabel/Epon) [Text with EEA relevance]
- 06.04.2000**
- C 98 2000/C 098-0009** Non-opposition to a notified concentration (Case COMP/M.1820 - BP/JV Dissolution) [Text with EEA relevance]
- 05.04.2000**
- C 96 2000/C 096-0008** Prior notification of a concentration (Case COMP/M.1911 - Dow/BSL) [Text with EEA relevance]
- C 96 2000/C 096-0005** Non-opposition to a notified concentration (Case COMP/JV.42 - Asahi Glass/Mitsubishi/F2 Chemicals) [Text with EEA relevance]
- C 96 2000/C 096-0005** Non-opposition to a notified concentration (Case COMP/JV.19 - KLM/Alitalia) [Text with EEA relevance]
- C 96 2000/C 096-0007** Prior notification of a concentration (Case COMP/JV.44 - Hitachi/NEC - DRAM/JV) [Text with EEA relevance]
- C 96 2000/C 096-0006** Prior notification of a concentration (Case COMP/ECSC.1328 - HSP/Salzgitter) [Text with EEA relevance]
- 04.04.2000**
- C 95 2000/C 095-0004** Prior notification of a concentration (Case COMP/M.1907 - Woco/Michelin)Text with EEA relevance
- C 95 2000/C 095-0003** Non-opposition to a notified concentration (Case COMP/JV.30 - BVI Television (Europe)/SPE Euromovies Investments/Europe Movieco Partners)Text with EEA relevance
- 01.04.2000**
- C 94 2000/C 094-0006** Initiation of proceedings (Case COMP/JV.27 - Microsoft/Liberty Media/Telewest)Text with EEA relevance
- 31.03.2000**
- C 93 2000/C 093-0009** Non-opposition to a notified concentration (Case COMP/M.1816 - Churchill Insurance Group/NIG Holdings)Text with EEA relevance
- C 93 2000/C 093-0010** Prior notification of a concentration (Case COMP/M.1902 - Telia/Commerzbank/FNH)Text with EEA relevance
- C 93 2000/C 093-0009** Non-opposition to a notified concentration (Case COMP/M.1772 - Continental Teves/ADC Automotive Distance Control)Text with EEA relevance
- 30.03.2000**
- C 91 2000/C 091-0004** Prior notification of a concentration (Case COMP/M.1836 - Siemens/Bosch/GSM Acquisition)Text with EEA relevance
- C 91 2000/C 091-0005** Non-opposition to a notified concentration (Case COMP/M.1739 - IVECO/Fraikin)Text with EEA relevance
- C 91 2000/C 091-0004** Renotification of a previously notified concentration (Case COMP/M.1745 - EADS)Text with EEA relevance
- 29.03.2000**
- C 90 2000/C 090-0011** Prior notification of a concentration (Case COMP/M.1846 - Glaxo Wellcome/SmithKline Beecham)Text with EEA relevance



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- C 90** 2000/C 090-0010 Prior notification of a concentration (Case COMP/M.1920 - Nabisco/United Biscuits)Text with EEA relevance
- 28.03.2000**
- C 89** 2000/C 089-0003 Non-opposition to a notified concentration (Case COMP/M.1801 - Neusiedler/American Israeli Paper Mills/JV) - Text with EEA relevance
- C 89** 2000/C 089-0004 Prior notification of a concentration (Case COMP/M.1814 - Bayer/Röhm/Makroform) - Text with EEA relevance
- C 89** 2000/C 089-0005 Prior notification of a concentration (Case COMP/M.1892 - Sara Lee/Courtaulds) - Text with EEA relevance
- 25.03.2000**
- C 88** 2000/C 088-0007 Prior notification of a concentration (Case COMP/M.1914 - TXU/Hidroeléctrica)Text with EEA relevance
- 24.03.2000**
- C 86** 2000/C 086-0007 Prior notification of a concentration (Case COMP/M.1887 - Crédit Suisse First Boston/Gala Group) - Text with EEA relevance
- 23.03.2000**
- C 84** 2000/C 084-0005 Prior notification of a concentration (Case COMP/M.1882 - Pirelli/BICC General)Text with EEA relevance
- C 84** 2000/C 084-0004 Prior notification of a concentration (Case COMP/M.1875 - Reuters/Equant - Project Proton)Text with EEA relevance
- C 84** 2000/C 084-0003 Prior notification of a concentration (Case COMP/M.1886 - CGU/Norwich Union)Text with EEA relevance
- 22.03.2000**
- C 82** 2000/C 082-0006 Non-opposition to a notified concentration (Case COMP/M.1650 - ACEA/Telefónica)Text with EEA relevance
- 21.03.2000**
- C 80** 2000/C 080-0005 Prior notification of a concentration (Case COMP/M.1895 - Ocean Group/Exel)Text with EEA relevance
- C 80** 2000/C 080-0004 Prior notification of a concentration (Case COMP/M.1904 - Carrefour/Gruppo GS)Text with EEA relevance
- 18.03.2000**
- C 78** 2000/C 078-0018 Prior notification of a concentration (Case COMP/ECSC.1325 - EMR/MPRH)Text with EEA relevance
- C 78** 2000/C 078-0017 Prior notification of a concentration (Case COMP/M.1871 - Arrow Electronics/Tekelec)Text with EEA relevance
- C 78** 2000/C 078-0016 Prior notification of a concentration (Case COMP/M.1876 - Kohlberg Kravis Roberts/Wassall/Zurttobel)Text with EEA relevance
- 17.03.2000**
- C 77** 2000/C 077-0011 Non-opposition to a notified concentration (Case COMP/M.1716 - Gehe/Herba)Text with EEA relevance
- C 77** 2000/C 077-0010 Prior notification of a concentration (Case COMP/M.1910 - MeritaNordbanken/UniDanmark)Text with EEA relevance
- 16.03.2000**
- C 76** 2000/C 076-0006 Non-opposition to a notified concentration (Case COMP/M.1660 - Bank of New York/Royal Bank of Scotland/RBSI Security Services)Text with EEA relevance
- C 76** 2000/C 076-0007 Non-opposition to a notified concentration (Case COMP/M.1774 - Deutsche BP/DaimlerChrysler AG/Union-Tank Eckstein)Text with EEA relevance
- C 76** 2000/C 076-0006 Non-opposition to a notified concentration (Case COMP/M.1618 - Bank of New York/Royal Bank of Scotland Trust Bank)Text with EEA relevance
- C 76** 2000/C 076-0005 Prior notification of a concentration (Case COMP/M.1812 - Telefónica/Terra/Amadeus)Text with EEA relevance
- C 76** 2000/C 076-0004 Prior notification of a concentration (Case COMP/M.1893 - Butler Capital/CDC/AXA/Finauto/Autodistribution/Finelist)Text with EEA relevance
- 15.03.2000**
- C 74** 2000/C 074-0006 Non-opposition to a notified concentration (Case COMP/M.1659 - Preussen Elektra/EZH)Text with EEA relevance
- 14.03.2000**
- C 73** 2000/C 073-0005 Withdrawal of notification of a concentration (Case COMP/M.1862 - Lafarge/Titan/Amereyah)Text with EEA relevance
- C 73** 2000/C 073-0005 Non-opposition to a notified concentration (Case COMP/M.1849 - Solectron/Ericsson Switches)Text with EEA relevance
- C 73** 2000/C 073-0004 Non-opposition to a notified concentration (Case COMP/M.1825 - Suzuki





Motor/Suzuki KG/Fafin)Text with EEA relevance

**10.03.2000**

**C 69** 2000/C 069-0008 Withdrawal of notification of a concentration (Case COMP/M.1829)Text with EEA relevance

**C 69** 2000/C 069-0008 Prior notification of a concentration (Case COMP/M.1865 - France Télécom/Global One)Text with EEA relevance

**C 69** 2000/C 069-0007 Prior notification of a concentration (Case COMP/M.1826 - KBC/KBC Petercam Derivatives NV)Text with EEA relevance

**09.03.2000**

**C 67** 2000/C 067-0009 Non-opposition to a notified concentration (Case COMP/JV.24 - Bertelsmann/Planeta/bol Spain)Text with EEA relevance

**C 67** 2000/C 067-0009 Non-opposition to a notified concentration (Case COMP/M.1759 - RMC/Rugby)Text with EEA relevance

**C 67** 2000/C 067-0008 Prior notification of a concentration (Case COMP/M.1793 - Voith/Siemens/JV)Text with EEA relevance

**C 67** 2000/C 067-0007 Prior notification of a concentration (Case COMP/M.1885 - Babcock Borsig/VA Technologie/Pipe-Tec)Text with EEA relevance

**C 67** 2000/C 067-0006 Prior notification of a concentration (Case COMP/M.1832 - Ahold/ICA-förbundet/Canica)Text with EEA relevance

**C 67** 2000/C 067-0005 Prior notification of a concentration (Case COMP/M.1883 - NEC/Mitsubishi)Text with EEA relevance

**C 67** 2000/C 067-0005 Prior notification of a concentration (Case COMP/M.1883 - NEC/Mitsubishi)Text with EEA relevance

**08.03.2000**

**C 66** 2000/C 066-0006 Prior notification of a concentration (Case COMP/M.1795 - Vodafone Airtouch/Mannesmann)Text with EEA relevance

**C 66** 2000/C 066-0005 Prior notification of a concentration (Case COMP/M.1745 - EADS)Text with EEA relevance

**C 66** 2000/C 066-0007 Prior notification of a concentration (Case COMP/M.1874 - Lafarge/Blue Circle)Text with EEA relevance

**C 66** 2000/C 066-0008 Prior notification of a concentration (Case COMP/M.1856 - Citigroup/Schroders)Text with EEA relevance

**C 66** 2000/C 066-0010 Prior notification of a concentration (Case COMP/M.1880 - Minnesota Mining and Manufacturing/Quante)Text with EEA relevance

**C 66** 2000/C 066-0011 Prior notification of a concentration (Case COMP/M.1867 - Volvo/Telia/Ericsson/WirelessCar)Text with EEA relevance

**C 66** 2000/C 066-0009 Prior notification of a concentration (Case COMP/M.1855 - Singapore Airlines/Virgin Atlantic)Text with EEA relevance

**C 66** 2000/C 066-0009 Prior notification of a concentration (Case COMP/M.1855 - Singapore Airlines/Virgin Atlantic)Text with EEA relevance

**07.03.2000**

**C 65** 2000/C 0065-0022 Non-opposition to a notified concentration (Case COMP/M.1777 - CGU/Hibernian)Text with EEA relevance

**C 65** 2000/C 0065-0022 Non-opposition to a notified concentration (Case COMP/M.1754 - Morgan Grenfell/Piaggio)Text with EEA relevance

**C 65** 2000/C 0065-0021 Prior notification of a concentration (Case COMP/M.1866 - Preussag/Hebel)Text with EEA relevance

(Case COMP/M.1866 - Preussag/Hebel)Text with EEA relevance

**C 65** 2000/C 0065-0020 Prior notification of a concentration (Case COMP/M.1842 - Vattenfall/HEW)Text with EEA relevance

**03.03.2000**

**C 61** 2000/C 061-0006 Non-opposition to a notified concentration (Case COMP/M.1786 - General Electric/Thomson CSF/JV)Text with EEA relevance

**01.03.2000**

**C 58** 2000/C 058-0005 Prior notification of a concentration (Case COMP/M.1873 - Compagnie de Saint-Gobain/Meyer International)Text with EEA relevance

**C 58** 2000/C 058-0006 Non-opposition to a notified concentration (Case COMP/M.1712 - Generali/INA)Text with EEA relevance

**29.02.2000**

**C 56** 2000/C 056-0009 Non-opposition to a notified concentration (Case COMP/M.1720 - Fortum/Elektrizitätswerk Wesertal)Text with EEA relevance

**C 56** 2000/C 056-0008 Prior notification of a concentration (Case COMP/M.1889 - CLT-UFA/Canal+/VOX)Text with EEA relevance

**C 56** 2000/C 056-0007 Prior notification of a concentration (Case COMP/M.1829 - HMTF/Nabisco Group Holdings/Burlington Biscuits/United Biscuits)Text with EEA relevance

**C 56** 2000/C 056-0006 Prior notification of a concentration (Case COMP/JV.42 - Asahi Glass/Mitsubishi/F2

**C 56** 2000/C 056-0006 Prior notification of a concentration (Case COMP/JV.42 - Asahi Glass/Mitsubishi/F2

**C 56** 2000/C 056-0006 Prior notification of a concentration (Case COMP/JV.42 - Asahi Glass/Mitsubishi/F2



Chemicals)Text with EEA relevance

**C 56** 2000/C 056-0009 Non-opposition to a notified concentration (Case COMP/JV.35 - Beiselen/Bay Wa/MG Chemag)Text with EEA relevance

**25.02.2000**

**C 53** 2000/C 053-0015 Non-opposition to a notified concentration (Case COMP/M.1675 - Ducros/Hero France)Text with EEA relevance

**C 53** 2000/C 053-0014 Prior notification of a concentration (Case COMP/M.1806 - Astra Zeneca/Novartis)Text with EEA relevance

**24.02.2000**

**C 52** 2000/C 052-0026 Prior notification of a concentration (Case COMP/M.1835 - Monsanto/Pharmacia & Upjohn)Text with EEA relevance

**C 52** 2000/C 052-0027 Non-opposition to a notified concentration (Case COMP/M.1590 - HSBC/RNYC/Safra)Text with EEA relevance

**C 52** 2000/C 052-0025 Prior notification of a concentration (Case COMP/M.1751 - Shell/BASF/JV - Project Nicole)Text with EEA relevance

**23.02.2000**

**C 50** 2000/C 050-0005 Non-opposition to a notified concentration (Case COMP/M.1789 - INA/LUK) [Text with EEA relevance]

**22.02.2000**

**C 49** 2000/C 049-0003 Non-opposition to a notified concentration (Case COMP/JV.36 - TXU Europe/EDF-London Investments)Text with EEA relevance

**C 49** 2000/C 049-0004 Non-opposition to a notified

concentration (Case COMP/M.1807 - FNAC/COIN/JV)Text with EEA relevance

**C 49** 2000/C 049-0004 Non-opposition to a notified concentration (Case COMP/JV.36 - TXU Europe/EDF-London Investments)Text with EEA relevance

**C 49** 2000/C 049-0003 Prior notification of a concentration (Case COMP/M.1838 - BT/Esat)Text with EEA relevance

**19.02.2000**

**C 46** 2000/C 046-0025 Non-opposition to a notified concentration (Case COMP/M.1794 - Deutsche Post/Air Express International)Text with EEA relevance

**C 46** 2000/C 046-0026 Prior notification of a concentration (Case COMP/M.1854 - Emerson Electric/Ericsson Energy Systems)Text with EEA relevance

**C 46** 2000/C 046-0025 Non-opposition to a notified concentration (Case COMP/M.1797 - SAAB/Celsius)Text with EEA relevance

**18.02.2000**

**C 45** 2000/C 045-0006 Prior notification of a concentration (Case COMP/M.1827 - Hanson/Pioneer)Text with EEA relevance

**C 45** 2000/C 045-0005 Prior notification of a concentration (Case COMP/M.1862 - Lafarge/Titan/Amercyah)Text with EEA relevance

**C 45** 2000/C 045-0008 Non-opposition to a notified concentration (Case COMP/M.1674 - Maersk/Ect)Text with EEA relevance

**C 45** 2000/C 045-0007 Non-opposition to a notified concentration (Case COMP/M.1698 -

RWA/Nordsee/Cerny)Text with EEA relevance

**C 45** 2000/C 045-0007 Non-opposition to a notified concentration (Case COMP/M.1763 - Solutia/Viking Resins)Text with EEA relevance

**C 45** 2000/C 045-0004 Renotification of a previously notified concentration (Case COMP/JV.37 - BSKyB/KirchPayTV)Text with EEA relevance

**17.02.2000**

**C 44** 2000/C 044-0005 Non-opposition to a notified concentration (Case COMP/M.1700 - AVNET/Eurotronics)Text with EEA relevance

**C 44** 2000/C 044-0006 Non-opposition to a notified concentration (Case COMP/M.1778 - Freudenberg/Phoenix/JV)Text with EEA relevance

**C 44** 2000/C 044-0005 Non-opposition to a notified concentration (Case COMP/M.1709 - Preussag/Babcock/Celsius)Text with EEA relevance

**C 44** 2000/C 044-0006 Non-opposition to a notified concentration (Case COMP/M.1742 - Sun Chemical/Totalfina/ Coates)Text with EEA relevance

**16.02.2000**

**C 43** 2000/C 043-0029 Renotification of a previously notified concentration (Case COMP/JV.27 - Microsoft/Liberty Media/Telewest)Text with EEA relevance

**C 43** 2000/C 043-0030 Prior notification of a concentration (Case COMP/M.1870 -



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ZF/Brembo/DFI)Text with EEA relevance

**C 43** 2000/C 043-0031 Prior notification of a concentration (Case COMP/M.1848 - Schrodgers Ventures European Fund/Takko ModeMarkt)Text with EEA relevance

### 15.02.2000

**C 42** 2000/C 042-0003 Prior notification of a concentration (Case COMP/M.1831 - Deutsche Bank/CIBA)Text with EEA relevance

### 12.02.2000

**C 40** 2000/C 040-0010 Prior notification of a concentration (Case COMP/M.1869 - CVC/BTR-Siebe Automotive Sealing Systems)Text with EEA relevance

### 11.02.2000

**C 39** 2000/C 039-0002 Non-opposition to a notified concentration (Case COMP/M.1775 - Ingersoll-Rand/Dresser-Rand/Ingersoll-Dresser Pump)Text with EEA relevance

**C 39** 2000/C 039-0002 Non-opposition to a notified concentration (Case COMP/M.1784 - Delphi Automotive Systems/Lucas Diesel)Text with EEA relevance

### 10.02.2000

**C 38** 2000/C 038-0010 Non-opposition to a notified concentration (Case COMP/M.1723 - Illinois Tool Works/Premark)Text with EEA relevance

**C 38** 2000/C 038-0009 Prior notification of a concentration (Case COMP/M.1861 - MAN/ERF)Text with EEA relevance

**C 38** 2000/C 038-0010 Initiation of proceedings (Case COMP/M.1673 - VEBA/VIAG)Text with EEA relevance

### 09.02.2000

**C 37** 2000/C 037-0010 Non-opposition to a notified concentration (Case COMP/M.1781 - Electrolux/Ericsson)Text with EEA relevance

### 08.02.2000

**C 35** 2000/C035-0011 Prior notification of a concentration (Case COMP/M.1849 - Solectron/Ericsson)Text with EEA relevance

**C 35** 2000/C035-0010 Prior notification of a concentration (Case COMP/JV.39 - Bertelsmann AG/Planeta Corporación SRL/Nuevas Ediciones de Bolsillo (NEB))Text with EEA relevance

### 05.02.2000

**C 33** 2000/C033-0005 Prior notification of a concentration (Case COMP/M.1841 - Celestica/IBM)Text with EEA relevance

**C 33** 2000/C033-0004 Prior notification of a concentration (Case COMP/M.1802 - Unilever/Amora-Maille)Text with EEA relevance

**C 33** 2000/C033-0003 Prior notification of a concentration (Case COMP/M.1840 - KKR/Bosch Telecom Private Networks)Text with EEA relevance

**C 33** 2000/C033-0002 Prior notification of a concentration (Case COMP/M.1813 - Industri Kapital (Nordkem)/Dyno ASA)Text with EEA relevance

### 04.02.2000

**C 32** 2000/C 032-0004 Non-opposition to a notified concentration (Case COMP/M.1735 - Seita/Tabacalera)Text with EEA relevance (

**C 32** 2000/C 032-0002 Renotification of a previously notified concentration (Case COMP/JV.32 -

Granaria/Ültje/Intersnack/May Holding)Text with EEA relevance

**C 32** 2000/C 032-0004 Non-opposition to a notified concentration (Case COMP/M.1773 - Nordic Capital/Trelleborg)Text with EEA relevance

**C 32** 2000/C 032-0003 Prior notification of a concentration (Case COMP/M.1847 - GM/SAAB)Text with EEA relevance

### 02.02.2000

**C 30** 2000/C 030-0006 Non-opposition to a notified concentration (Case COMP/M.1686 - DaimlerChrysler Services/MB-Automobilvertriebsgesellschaft)Text with EEA relevance

**C 30** 2000/C 030-0007 Non-opposition to a notified concentration (Case COMP/M.1755 - CVC/Acordis)Text with EEA relevance

**C 30** 2000/C 030-0006 Non-opposition to a notified concentration (Case COMP/M.1453 - AXA/GRE)Text with EEA relevance

**C 30** 2000/C 030-0007 Non-opposition to a notified concentration (Case COMP/M.1764 - Skandinaviska Enskilda Banken/BFG Bank)Text with EEA relevance

### STATE AID

#### 30.05.2000

L 129 2000/L 129-0026 Commission Decision of 15 February 2000 on the State aid which Belgium is planning to grant to NV Sidmar (notified under document number C(2000) 517)

27.05.2000



**C 149** 2000/C 149-0031 Judgment of the Court of First Instance of 16 March 2000 in Case T-72/98: Astilleros Zamacona SA v Commission of the European Communities (State aid - Shipbuilding - Article 4(3) of Council Directive 90/684/EEC - Determination of the ceiling for production aid)

**C 148** 2000/C 148-0002 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning the aid C 7/2000 (ex NN 155/99 and ex N 490/98) - Italy - Law No 290 of 17 August 1999: "Extension of time limits in the agricultural sector"

**C 148** 2000/C 148-0014 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty concerning aid C.12/2000 (ex N 532/99) - Netherlands: development aid for China (shipbuilding)

**C 148** 2000/C 148-0016 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

**C 148** 2000/C 148-0019 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

**C 148** 2000/C 148-0010 State aid - Invitation to submit comments pursuant to Article 6(5) of the Commission Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry (hereinafter referred to as the Steel Aid Code), concerning aid C 13/2000 (ex N 585-589/99) - environmental aid to ECSC steel companies

**20.05.2000**

**L 120** 2000/L 120-0001 Commission Decision of 25

November 1998 on State aid granted by Italy to Enirisorse SpA (notified under document number C(1998) 3866)

**L 120** 2000/L 120-0012 Commission Decision of 15 February 2000 on State aid implemented by Germany in favour of Kvaerner Warnow Werft GmbH (notified under document number C(2000) 516)

**C 142** 2000/C 142-0020 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 11/2000 (ex N 166/99) - Italy: investment aid to Rivit SpA, non-ECSC steel

**C 142** 2000/C 142-0002 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

**C 142** 2000/C 142-0011 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty concerning aid/measure C 17/2000 (ex N 736/99) - Aid to Solar Tech srl - Italy

**C 142** 2000/C 142-0023 State Aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 8/2000 (ex N 548/98) - Aid for education of farmers in Allgäu, Germany

**C 142** 2000/C 142-0026 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 9/2000 (ex NN 5/99) - Second privatisation of KataLeuna GmbH Catalysts

**C 142** 2000/C 142-0003 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 73/99 (ex NN 90/97) - Germany - Restructuring measures concerning a milk processing undertaking; Rhöngold Molkerei

**18.05.2000**

**L 117** 2000/L 117-0026 Commission Decision of 15 February 2000 on the State aid which Italy plans to grant to Fiat Auto SpA for its plant in Rivalta (Turin) (notified under document number C(2000) 487)

**13.05.2000**

**C 134** 2000/C 134-0005 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 6/2000 (ex NN 93/99) - Kvaerner Warnow Werft - Excess payment of restructuring aid

**C 134** 2000/C 134-0004 State aid-C 59/99 (ex N 352/99)-France

**C 134** 2000/C 134-0004 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

**C 134** 2000/C 134-0003 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

**C 134** 2000/C 134-0002 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

**11.05.2000**

**L 112** 2000/L 112-0075 EFTA Surveillance Authority Decision No 112/99/COL of 4 June 1999 introducing new guidelines on State aid to the motor vehicle industry and amending for the seventeenth time the Procedural and Substantive Rules in the Field of State Aid

**C 130** 2000/C 130-0013 Authorisation of State aid pursuant to Article 61 of the EEA Agreement and Article 1(3) of Protocol 3 to the Surveillance and Court Agreement - EFTA Surveillance



## ➤ INFORMATION SECTION

Authority decision not to raise objections

### 06.05.2000

**L 110** 2000/L 110-0017  
Commission Decision of 22 December 1999 on the State aid scheme implemented by Italy for the production, processing and marketing of products listed in Annex I to the EC Treaty (Sicilian Regional Law No 68 of 27 September 1995) (Notified under document number C(1999) 5202)

**L 110** 2000/L 110-0001  
Commission Decision of 8 July 1999 on State aid which Italy plans to grant to Fiat Auto SpA for its plant at Piedimonte San Germano, Cassino (Notified under document number C(1999) 2267)

**L 110** 2000/L 110-0009  
Commission Decision of 28 July 1999 on State aid which Italy plans to grant to Fiat Auto SpA for its plant at Pomigliano d'Arco (Naples) (Notified under document number C(1999) 2916)

### 05.05.2000

**C 127** 2000/C 127-0011  
Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

### 03.05.2000

**L 105** 2000/L 105-0015  
Commission Regulation (EC) No 908/2000 of 2 May 2000 laying down detailed rules for calculating aid granted by Member States to producer organisations in the fisheries and aquaculture sector

### 29.04.2000

**C 121** 2000/C 121-0029  
Corrigendum to the Community guidelines on State aid for rescuing and restructuring firms in difficulty (Notice to Member States including proposals for

appropriate measures) (OJ C 288, 9 October 1999)

**C 121** 2000/C 121-0019  
Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

**C 121** 2000/C 121-0018  
Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections [Text with EEA relevance]

**C 121** 2000/C 121-0016  
Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections [Text with EEA relevance]

### 19.04.2000

**L 98** 2000/L 098-0001  
Commission Decision of 10 November 1999 concerning aid which the Region of Tuscany (Italy) intends to grant in the livestock sector in favour of the Chianina cattle breed (notified under document number C(1999) 3866)

### 15.04.2000

**C 110** 2000/C 110-0040  
Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections [Text with EEA relevance]

**C 110** 2000/C 110-0002  
State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning measures C 1/2000 (ex N 769/99) - Restructuring aid in favour of Philipp Holzmann AG [Text with EEA relevance]

**C 110** 2000/C 110-0009  
State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning measure C 2/2000 (ex N 718/99) - Sweden -

Measures to improve the indoor environment in buildings [Text with EEA relevance]

**C 110** 2000/C 110-0012  
State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, and Article 6(5) of Commission Decision 2496/96/ECSC concerning aid C 9/95 (formerly NN 121/94) - Spain - Tubacex (ECSC and non-ECSC steel) [Text with EEA relevance]

**C 110** 2000/C 110-0017  
State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid measure C 10/00 (ex NN 112/99 - N 141/99) - Aid in favour of Stomag Stahl- und Maschinenbau AG - Germany [Text with EEA relevance]

**C 110** 2000/C 110-0033  
State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 5/2000 (ex C 68/97 (ex NN 118/97)) - Sniace SA - Spain [Text with EEA relevance]

**C 110** 2000/C 110-0041  
Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections

**C 110** 2000/C 110-0044  
Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections [Text with EEA relevance]

**C 110** 2000/C 110-0027  
State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty concerning aid C 75/99 (ex N 167/99) - Regional aid to be granted to Fiat - SATA for an investment project in Melfi



**08.04.2000**

**C 102** 2000/C 102-0028 Case T-354/99: Action brought on 10 December 1999 by Kuwait Petroleum (Nederland) B.V. against the Commission of the European Communities

**C 102** 2000/C 102-0019 Judgment of the Court of First Instance of 16 December 1999 in Case T-158/96: Acciaierie di Bolzano SpA v Commission of the European Communities (ECSC Treaty - Action for annulment - State aid - Decision finding aid incompatible and ordering its repayment - Unnotified aid - Steel Aid Code applicable - Rights of the defence - Protection of legitimate expectations - Interest rate applicable - Statement of reasons)

**C 101** 2000/C 101-0011 State aids - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning the aid C 3/2000 (ex N 233/99 and N 234/99) - Netherlands - Development aid to Indonesia (Shipbuilding) [Text with EEA relevance]

**C 101** 2000/C 101-0003 State aid - Germany [Text with EEA relevance]

**C 101** 2000/C 101-0002 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections

**06.04.2000**

**L 85** 2000/L 085-0027 Commission Decision of 30 September 1998 on aid granted by Germany to SKET Verseilmashinenbau GmbH [Text with EEA relevance] (notified under document number C(1998) 3022)

**04.04.2000**

**L 83** 2000/L 083-0021 Commission Decision of 20 July

1999 on State aid granted by Italy to the Inma shipyard through the public holding company Itainvest (formerly GEPI) [Text with EEA relevance] (notified under document number C(1999) 2532)

**C 95** 2000/C 095-0023 Corrigendum to the authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections (OJ C 88, 25 March 2000)

**01.04.2000**

**C 94** 2000/C 094-0009 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections

**C 94** 2000/C 094-0007 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevance e

**30.03.2000**

**C 91** 2000/C 091-0006 Authorisation of State aid pursuant to Article 61 of the EEA Agreement and Article 1(3) of Protocol 3 to the Surveillance and Court Agreement - EFTA Surveillance Authority decision not to raise objections

**29.03.2000**

**L 78** 2000/L 078-0023 Commission Decision of 16 November 1999 on the State aid which Italy plans to grant for the creation of new shipyards at Oristano (Sardinia) and Belvedere Marittimo (Calabria)Text with EEA relevance (notified under document number C(1999) 4839)

**28.03.2000**

**C 89** 2000/C 089-0008 Draft Commission Regulation on the application of Articles 87 and 88 of the EC Treaty to training aid

**C 89** 2000/C 089-0015 Draft Commission Regulation on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises

**C 89** 2000/C 089-0006 Draft Commission Regulation on the application of Articles 87 and 88 of the EC Treaty to de minimis aid

**25.03.2000**

**C 88** 2000/C 088-0002 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections

**C 88** 2000/C 088-0008 State aid - Invitation to submit comments pursuant to Article 6(5) of Commission Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry concerning aid C 76/99 (ex NN 153/98) - Employment aid for Cockerill Sambre SA. ECSC steelText with EEA relevance

**C 88** 2000/C 088-0005 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevance

**C 88** 2000/C 088-0003 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevance



**18.03.2000**

**C 79** 2000/C 079-0022  
Judgment of the Court of First Instance of 15 December 1999 in Joined Cases T-132/96 and T-143/96: Freistaat Sachsen and Others v Commission of the European Communities (State aids - Compensation for economic disadvantages caused by the division of Germany - Serious disturbance in the economy of a Member State - Regional economic development - Community Framework on State Aid to the Motor Vehicle Industry)

**C 79** 2000/C 079-0025 Order of the Court of First Instance of 27 January 2000 in Case T-49/97: TAT European Airlines SA v Commission of the European Communities (State aid - Air transport - Authorisation of aid payable in three tranches - Action brought against the decision authorising payment of the third tranche - Adoption of a fresh decision authorising the aid in implementation of an annulling judgment - No need to adjudicate - Conditions)

**C 78** 2000/C 078-0004  
Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections

**C 78** 2000/C 078-0008 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty concerning aid C 77/99 (ex NN 97/99) - Regional aid to VW-AMD for an investment project in SaxonyText with EEA relevance

**C 78** 2000/C 078-0006  
Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no

objectionsText with EEA relevance

**14.03.2000**

**L 66** 2000/L 066-0001  
Commission Decision of 17 March 1999 on State aid given by Greece to Heraclis General Cement CompanyText with EEA relevance. (notified under document number C(1999) 716)

**L 62** 2000/L 062-0026  
Commission Decision of 28 July 1999 on State aid granted by the Federal Republic of Germany to Pittler/Tornos Werkzeugmaschinen GmbHText with EEA relevance (notified under document number C(1999) 3025)

**11.03.2000**

**C 71** 2000/C 071-0014  
Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees

**C 71** 2000/C 071-0008 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 48/99 (ex NN 129/98) - Spain (Province of Álava) - Tax aid in form of a 45 % tax creditText with EEA relevance

**C 71** 2000/C 071-0007  
Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevance

**C 71** 2000/C 071-0006  
Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections

**08.03.2000**

**L 61** 2000/L 061-0004  
Commission Decision of 14 July 1999 on aid granted by Germany to Weida Leder GmbH (Weida), ThuringiaText with EEA

relevance (notified under document number C(1999) 3441)

**04.03.2000**

**C 62** 2000/C 0062-00018  
Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevance

**C 62** 2000/C 0062-00016  
Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections

**C 62** 2000/C 0062-0007 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid insert C 79/99 (ex N 481/99) - Rover LongbridgeText with EEA relevance

**C 62** 2000/C 0062-0002 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty concerning measure C 78/99 (ex NN 305/99) - Portuguese regional aid map for the period from 2000 to 2006Text with EEA relevance

**26.02.2000**

**C 55** 2000/C 055-0008  
Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevance

**C 55** 2000/C 055-0002 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty concerning three tax aid schemes: C 49/99 (ex NN 29/99) - Tax aid in the form of a reduction in the tax base for newly established firms in the province of Álava (Spain); C



50/99 (ex NN 30/99) - Tax aid in the form of a reduction in the tax base for newly established firms in the province of Guipúzcoa (Spain); C 52/99 (ex NN 32/99) - Tax aid in the form of a reduction in the tax base for newly established firms in the province of Vizcaya (Spain)Text with EEA relevance

**C 55** 2000/C 055-0011 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevance

**C 55** 2000/C 055-0010 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections

**24.02.2000**

**C 52** 2000/C 052-0030 Authorisation of State aid pursuant to Article 61 of the EEA Agreement and Articles 3(5) and 3(1) of the Act referred to in point 1b of Annex XV to the EEA Agreement - EFTA Surveillance Authority decision not to raise objections

**23.02.2000**

**L 50** 2000/L 050-0019 Commission Decision of 11 February 2000 on Finnish State aid for seeds (notified under document number C(2000) 358)

**19.02.2000**

**C 46** 2000/C 046-0006 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections

**C 46** 2000/C 046-0004 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no

objectionsText with EEA relevance

**C 46** 2000/C 046-0002 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections

**15.02.2000**

**L 42** 2000/L 042-0019 Commission Decision of 20 July 1999 on State aid implemented by the Federal Republic of Germany for Lautex GmbH Weberei und VeredlungText with EEA relevance. (notified under document number C(1999) 3026)

**L 42** 2000/L 042-0001 Commission Decision of 11 May 1999 concerning aid granted by Italy to promote employmentText with EEA relevance. (Notified under document number C(1999) 1364)

**12.02.2000**

**L 37** 2000/L 037-0022 Commission Decision of 26 October 1999 on the State aid implemented by Spain in favour of the publicly owned shipyards [Text with EEA relevance] (notified under document number C(1999) 3864)

**C 40** 2000/C 040-0004 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections

**C 40** 2000/C 040-0002 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevance

**10.02.2000**

**L 35** 2000/L 035-0043 Decision of the EEA Joint Committee No 12/1999 of 29 January 1999

amending Annex XV (State aid) to the EEA Agreement

**05.02.2000**

**C 33** 2000/C033-0009 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevance

**C 33** 2000/C033-0006 State aids - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 74/99 (ex NN 65/99) - France - Development aid to Saint-Pierre-et-Miquelon (Shipbuilding)Text with EEA relevance

**04.02.2000**

**L 30** 2000/L 030-0025 Commission Decision of 20 July 1999 on State Aid granted by Germany to SKET Maschinen- und Anlagenbau GmbHText with EEA relevance. (notified under document number C(1999) 2538)

**PRESS RELEASES**

**1.2.2000 - 31.5.2000**

All texts are available from the Commission's press release database **RAPID** at: <http://europa.eu.int/rapid/start>. Enter reference (e.g.: IP/00/544) in the "Reference" input box on the research form to retrieve text of a press release. Press releases on competition matters can be consulted daily from DG Competition's website at: <http://europa.eu.int/comm/dg04/pres sre.htm>

**Note: languages available vary for different press releases.**





## ➤ INFORMATION SECTION

### **ANTITRUST**

Reference: **IP/00/544** Date: 2000-05-29 : European Commission appoints new Hearing Officer

Reference: **IP/00/520** Date: 2000-05-24 : Commission finalises new competition rules for distribution

Reference: **IP/00/508** Date: 2000-05-23 : Commission clears European manufacturers' agreement to improve energy efficiency of electric motors

Reference: **IP/00/495** Date: 2000-05-19 : Commission seeks a mandate for negotiations with Japan on a co-operation agreement in the competition field

Reference: **IP/00/472** Date: 2000-05-12 : Commission approves the EBU-Eurovision system

Reference: **IP/00/419** Date: 2000-04-28 : Commission opens proceedings against Nintendo distribution practices

Reference: **IP/00/411** Date: 2000-04-27 : Commission starts public consultation on the proposed reform of competition rules applicable to horizontal co-operation agreements

Reference: **IP/00/409** Date: 2000-04-27 : Telecommunications: Commission takes France to court over universal service

Reference: **IP/00/404** Date: 2000-04-25 : Commission renews block exemption for consortium agreements in shipping

Reference: **IP/00/372** Date: 2000-04-12 : Commission ready to lift immunity from fines to Telefónica Media and Sogecable in Spanish football rights case

Reference: **IP/00/297** Date: 2000-03-27 : Commission closes investigation on Spanish company GAS NATURAL

Reference: **IP/00/296** Date: 2000-03-27 : Financial services: Commission closes infringement cases against Portugal concerning BSCH/Champalimaud

Reference: **IP/00/183** Date: 2000-02-23 : Reaction by Commissioner Mario Monti to the Agreement On The Fixed Book Price (Germany and Austria)

Reference: **IP/00/154** Date: 2000-02-15 : Commission assesses the updated Stability Programme of Italy

Reference: **IP/00/148** Date: 2000-02-11 : Commission approves an agreement to improve energy efficiency of washing machines.

Reference: **IP/00/141** Date: 2000-02-10 : Commission examines the impact of Windows 2000 on competition

Reference: **IP/00/121** Date: 2000-02-07 : Car prices in the European Union: differentials between Member states of the euro zone narrow slightly

Reference: **IP/00/111** Date: 2000-02-04 : Commission launches second phase of telecommunications sector inquiry under the competition rules: mobile roaming

### **MERGERS**

Reference: **IP/00/570** Date: 2000-05-31 : Commission clears spin-off of Nortel Networks manufacturing assets to Solectron.

Reference: **IP/00/568** Date: 2000-05-31 : Commission authorises takeover of tour operator GTT by TUI

Reference: **IP/00/561** Date: 2000-05-31 : Commission approves establishment of packaging joint venture by Teehpac International and Aptar/Valois

Reference: **IP/00/560** Date: 2000-05-31 : Commission clears acquisition of French bank CCF by HSBC Holdings

Reference: **IP/00/559** Date: 2000-05-31 : Commission approves joint venture between Ahlström Machinery and Andritz in the field of pulp and paper equipment

Reference: **IP/00/548** Date: 2000-05-30 : Commission clears acquisition of Seima by Magneti Marelli

Reference: **IP/00/543** Date: 2000-05-29 : Commission authorises Carrefour and Marinopoulos to set up a joint venture in Greece

Reference: **IP/00/542** Date: 2000-05-29 : Commission gives green light to a US joint venture between BellSouth and SBC Communications

Reference: **IP/00/539** Date: 2000-05-29 : Commission opens full probe into Boeing's acquisition of the satellite business of Hughes Electronics

Reference: **IP/00/535** Date: 2000-05-26 : Commission approves joint acquisition of Fendi by LVMH and PRADA

Reference: **IP/00/528** Date: 2000-05-25 : Commission clears Ford's acquisition of full control of Autonova



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Reference: **IP/00/509** Date: 2000-05-23 : Commission approves merger between Pfizer and Warner-Lambert subject to commitments

Reference: **IP/00/500** Date: 2000-05-22 : Commission clears Alcatel acquisition of Newbridge Networks

Reference: **IP/00/499** Date: 2000-05-22 : Commission approves acquisition of MWCR by SanPaolo IMI and Schrodgers Groups

Reference: **IP/00/496** Date: 2000-05-19 : European Commission clears purchase of Cordant Technologies by Alcoa

Reference: **IP/00/494** Date: 2000-05-19 : Commission clears acquisition of Burmah Castrol by BP Amoco.

Reference: **IP/00/492** Date: 2000-05-18 : Commission approves purchase by Cap Gemini of Ernst & Young's global consulting and IT activities

Reference: **IP/00/478** Date: 2000-05-15 : Commission authorises Bertelsmann to acquire stake in Nordic Internet bookshop Bokus

Reference: **IP/00/473** Date: 2000-05-12 : Commission clears acquisition of Diligentia by Skandia Life Insurance

Reference: **IP/00/453** Date: 2000-05-10 : Commission clears purchase of Courtaulds Textiles by Sara Lee subject to the sale of the Well brand

Reference: **IP/00/452** Date: 2000-05-10 : Commission grants conditional clearance to merger between Glaxo Wellcome and SmithKline Beecham

Reference: **IP/00/447** Date: 2000-05-08 : Commission approves joint

venture between Dynamit Nobel GmbH Explosivstoff- und Systemtechnik and Orica Europe Ltd.

Reference: **IP/00/446** Date: 2000-05-08 : Commission clears Nabisco acquisition of United Biscuits

Reference: **IP/00/439** Date: 2000-05-04 : Commission authorises creation of joint venture between Hitachi and NEC to produce DRAMs

Reference: **IP/00/438** Date: 2000-05-04 : Commission clears merger between Ocean and Exel in the sector for logistics services

Reference: **IP/00/425** Date: 2000-05-04 : Commission clears Dow Chemical's acquisition of Union Carbide subject to commitments

Reference: **IP/00/424** Date: 2000-05-04 : Commission clears merger between Alcoa and Reynolds Metals, under conditions

Reference: **IP/00/421** Date: 2000-05-02 : Commission authorises acquisition of Hoesch Spundwand und Profil GmbH (Germany) by Salzgitter AG (Germany)

Reference: **IP/00/420** Date: 2000-05-02 : Commission approves takeover of Robert Bosch GmbH's mobile telephony operations by Siemens AG

Reference: **IP/00/417** Date: 2000-04-28 : Commission clears Dow Chemical's acquisition of full control in Germany's BSL

Reference: **IP/00/416** Date: 2000-04-28 : Commission clears joint control by Telia and Commerzbank of investment companies FNH and TCI

Reference: **IP/00/415** Date: 2000-04-28 : Commission clears Internet travel agency joint venture between Telefonica's TERRA and Amadeus

Reference: **IP/00/396** Date: 2000-04-18 : Commission gives go-ahead to joint venture between Reuters and Equant

Reference: **IP/00/395** Date: 2000-04-18 : Commission approves Polycarbonate plates joint venture of Bayer and Röhm

Reference: **IP/00/394** Date: 2000-04-18 : Commission opens in-depth investigation into proposed takeover of BICC by Pirelli

Reference: **IP/00/390** Date: 2000-04-14 : Commission notifies VEBA and VIAG of its objections against proposed merger

Reference: **IP/00/386** Date: 2000-04-14 : Commission clears acquisition of sole control by Arrow Electronics, Inc. over Tekelec Europe, S.A.

Reference: **IP/00/385** Date: 2000-04-14 : Commission clears merger between CGU and Norwich Union

Reference: **IP/00/373** Date: 2000-04-12 : Commission clears merger between Vodafone Airtouch and Mannesmann AG with conditions

Reference: **IP/00/354** Date: 2000-04-11 : Commission clears the proposed acquisition by European Metal Recycling Limited of Mayer Parry

Reference: **IP/00/352** Date: 2000-04-11 : Commission clears merger between MeritaNordbanken and UniDanmark

Reference: **IP/00/346** Date: 2000-04-10 : Commission clears



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acquisition of Blue Circle by Lafarge

Reference: **IP/00/343** Date: 2000-04-07 : Commission approves joint venture between Ahold, ICA Förbundet and Canica

Reference: **IP/00/342** Date: 2000-04-07 : The Commission authorises the acquisition of sole control by Carrefour over the Italian retailer Gruppo GS.

Reference: **IP/00/328** Date: 2000-04-04 : Commission approves hydraulic power joint venture between Voith and Siemens

Reference: **IP/00/327** Date: 2000-04-04 : Commission authorises NEC and Mitsubishi to set up a JV company in the field of PC monitors.

Reference: **IP/00/325** Date: 2000-04-03 : Commission approves joint venture between Preussag and VA Technologie

Reference: **IP/00/324** Date: 2000-04-03 : Commission clears the acquisition by 3M of Quante's telecom components business.

Reference: **IP/00/323** Date: 2000-04-03 : Commission approves merger in the financial services sector

Reference: **IP/00/315** Date: 2000-03-30 : Commission clears merger between Monsanto (USA) and Pharmacia & Upjohn (USA) subject to conditions

Reference: **IP/00/313** Date: 2000-03-30 : Commission clears joint venture between Shell and BASF subject to commitments

Reference: **IP/00/308** Date: 2000-03-30 : Commission clears the

acquisition by Citigroup (US) of part of Schroders (UK)

Reference: **IP/00/302** Date: 2000-03-28 : Commission clears the acquisition by BT of Esat

Reference: **IP/00/293** Date: 2000-03-24 : Commission approves take-over of Meyer International plc by Compagnie de Saint-Gobain

Reference: **IP/00/283** Date: 2000-03-21 : Commission gives go-ahead to joint venture between Asahi Glass and Mitsubishi

Reference: **IP/00/282** Date: 2000-03-21 : Commission clears the acquisition by CLT-UFA of News' stake in the German TV channel VOX.

Reference: **IP/00/281** Date: 2000-03-21 : Commission opens in-depth investigation into the merger of the crop protection businesses of Novartis and AstraZeneca.

Reference: **IP/00/280** Date: 2000-03-21 : Commission clears the creation of ASTRIUM, subject to conditions

Reference: **IP/00/279** Date: 2000-03-21 : Commission authorises the participation of BskyB in KirchPayTV

Reference: **IP/00/275** Date: 2000-03-21 : Commission approves acquisition of joint control of HEW by Vattenfall and the Freie und Hansestadt Hamburg

Reference: **IP/00/267** Date: 2000-03-16 : Commission clears acquisition of Ericsson Energy Systems by Emerson Electric

Reference: **IP/00/259** Date: 2000-03-14 : Commission authorises under conditions the merger

between aluminium producers Alcan and Alusuisse

Reference: **IP/00/258** Date: 2000-03-14 : Alcan abandons its plans to acquire Pechiney to avoid the prospect of a decision by the European Commission to block the merger

Reference: **IP/00/257** Date: 2000-03-14 : The Commission prohibits Volvo's acquisition of its main competitor Scania

Reference: **IP/00/241** Date: 2000-03-09 : Commission clears the acquisition by Unilever France of Amora-Maille subject to conditions

Reference: **IP/00/214** Date: 2000-03-01 : Commission approves the acquisition of ERF (Holdings) plc (UK) by MAN Nutzfahrzeuge AG (Germany)

Reference: **IP/00/212** Date: 2000-03-01 : Commission clears acquisition by KKR Group of Bosch Telekom Private Networks

Reference: **IP/00/205** Date: 2000-03-01 : Commission clears the acquisition by Soletron of the telecom switching hardware activities of Ericsson in Sweden and France.

Reference: **IP/00/200** Date: 2000-02-29 : Commission approves establishment of Nuevas Ediciones de Bolsillo (NEB) joint venture by Bertelsmann and Planeta.

Reference: **IP/00/199** Date: 2000-02-29 : Commission clears joint venture between Granaria, Ültje and Felix Snack in the nut snack sector

Reference: **IP/00/197** Date: 2000-02-28 : Commission approves the participation of Telekom Austria in Libro



Reference: **IP/00/194** Date: 2000-02-28 : Commission clears Celestica's acquisition of IBM's electronic manufacturing services (EMS) businesses in Italy and the US.

Reference: **IP/00/188** Date: 2000-02-25 : Commission opens in-depth investigation into the acquisition of Dyno ASA by Industri Kapital in the chemicals market

Reference: **IP/00/177** Date: 2000-02-22 : Commission clears acquisition by Bayer AG of the polyether polyols activities of Lyondell Chemical Company

Reference: **IP/00/174** Date: 2000-02-21 : Commission opens full investigation into the MCI WorldCom / Sprint merger

Reference: **IP/00/173** Date: 2000-02-21 : Commission approves acquisition of joint control of E-Plus by KPN and BellSouth

Reference: **IP/00/172** Date: 2000-02-21 : Commission approves takeover of Europcar International S.A. by Volkswagen AG

Reference: **IP/00/150** Date: 2000-02-14 : Commission approves joint venture in paper sector

Reference: **IP/00/135** Date: 2000-02-09 : Commission authorises TotalFina to take control of Elf Aquitaine subject to substantial changes to the plan originally notified

Reference: **IP/00/134** Date: 2000-02-09 : Commission approves the acquisition of AGA (Sweden) by Linde (Germany) subject to conditions

Reference: **IP/00/129** Date: 2000-02-08 : Commission clears Merger

between Hellenic Bottling Company and Coca-Cola Beverages plc, subject to undertakings

Reference: **IP/00/128** Date: 2000-02-08 : Commission approves the acquisition of Air Express International by Deutsche Post AG

Reference: **IP/00/126** Date: 2000-02-08 : Commission authorises the acquisition by Electrabel (Belgium) of the Dutch electricity producer EPON

Reference: **IP/00/125** Date: 2000-02-08 : Commission authorises joint venture between Eastern Electricity and London Electricity

Reference: **IP/00/118** Date: 2000-02-07 : Commission clears the merger between Swedish defence companies Saab and Celsius

Reference: **IP/00/114** Date: 2000-02-05 : Commission opens in-depth investigation into merger between VEBA and VIAG

Reference: **IP/00/110** Date: 2000-02-04 : Commission clears acquisitions by Suzuki Motor Corporation

Reference: **IP/00/109** Date: 2000-02-04 : Commission clears Finalrealm's acquisition of United Biscuits

Reference: **IP/00/106** Date: 2000-02-03 : Commission agrees to dissolution of BP/Mobil Joint Venture, a European fuel and lubricants producer and retailer; the dissolution was a condition of the ExxonMobil merger clearance decision

Reference: **IP/00/105** Date: 2000-02-03 : Commission approves joint venture between General Electric Company (USA) and Thomson-CSF

(France) in the field of flight simulator training.

Reference: **IP/00/104** Date: 2000-02-02 : Commission gives go-ahead to planned joint venture between Chemag, Beiselen and BayWa

Reference: **IP/00/92** Date: 2000-02-01 : Commission concludes that BellSouth acquisition of VR Telecommunications' stake in E-Plus falls outside Eu rules

#### **STATE AID**

Reference: **IP/00/550** Date: 2000-05-30 : Commission approves Austria regional aid map for 2000-2006

Reference: **IP/00/549** Date: 2000-05-30 : Commission closes investigation procedure against of original Dutch proposal for regional aid map

Reference: **IP/00/483** Date: 2000-05-16 : Commission decides that Italian law on the extraordinary administration of large enterprises in difficulty contained incompatible State aid

Reference: **IP/00/430** Date: 2000-05-03 : Commission questions Belgian plan to grant aid to Ford's factory in Genk

Reference: **IP/00/429** Date: 2000-05-03 : Commission says Swedish income tax relief for foreign experts does not constitute State aid

Reference: **IP/00/428** Date: 2000-05-03 : Commission says Danish low income tax rate for experts recruited abroad is not State aid

Reference: **IP/00/427** Date: 2000-05-03 : European Commission



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approves regional aid package for Sweden

Reference: **IP/00/426** Date: 2000-05-03 : Commission adopts 13th Monitoring Report on the Article 95 ECSC steel aid cases

Reference: **IP/00/370** Date: 2000-04-11 : Commission declares that EDF rebates to firms in the paper industry do not constitute State aid

Reference: **IP/00/367** Date: 2000-04-11 : State aid still too high despite decrease, says annual survey

Reference: **IP/00/363** Date: 2000-04-11 : Commission turns to the Court because of Germany's failure to recover WestLB state aid

Reference: **IP/00/362** Date: 2000-04-11 : Commission approves Spain's regional aid map for 2000-2006

Reference: **IP/00/361** Date: 2000-04-11 : Commission gives green light to French and Dutch aid for ITEA research programme

Reference: **IP/00/360** Date: 2000-04-11 : European Commission approves regional aid package for Denmark

Reference: **IP/00/359** Date: 2000-04-11 : Commission approves increase in emergency aid for two earthquake-hit regions in Italy Marche and Umbria

Reference: **IP/00/358** Date: 2000-04-11 : Commission approves a loan and equity fund in Ireland - Western Investment Fund.

Reference: **IP/00/357** Date: 2000-04-11 : Commission approves shipbuilding aid schemes in Netherlands.

Reference: **IP/00/356** Date: 2000-04-11 : Commission closes formal investigation procedure into unnotified state aid to System Microelectronic Innovation GmbH

Reference: **SPEECH/00/113** Date: 2000-03-30 : Mario Monti European Commissioner for Competition Policy The Community's State Aid Policy Conference of the 16 Ministers of Economic Affairs of the German Länder Brussels, 30 March 2000

Reference: **IP/00/305** Date: 2000-03-29 : Commission approves regional aid map for Sweden

Reference: **IP/00/304** Date: 2000-03-29 : Commission approves CO2 quotas for the electricity sector in Denmark for the period 2001-2003

Reference: **IP/00/303** Date: 2000-03-29 : Commission finds that Kvaerner Warnow Werft GmbH has respected its capacity limitation in 1999.

Reference: **IP/00/254** Date: 2000-03-14 : Commission approves tax breaks for investment in Madeira (Portugal)

Reference: **IP/00/253** Date: 2000-03-14 : Commission to scrutinise plan to aid Solar Tech srl (Italy)

Reference: **IP/00/252** Date: 2000-03-14 : Commission approves regional aid map for West German regions and Berlin for 1 January 2000 to December 2003.

Reference: **IP/00/251** Date: 2000-03-14 : Commission opens proceedings into aid for Technische Glaswerke Ilmenau

Reference: **IP/00/211** Date: 2000-03-01 : European Commission launches formal investigation into

reduced social contributions in Sweden

Reference: **IP/00/210** Date: 2000-03-01 : Commission opens proceedings against aid to five Italian steel companies for energy conservation

Reference: **IP/00/209** Date: 2000-03-01 : Commission clears capital injection into Italian leisure park

Reference: **IP/00/208** Date: 2000-03-01 : Commission approves part of the regional state aid map for Italy for 2000-2006 and opens scrutiny procedure regarding proposed regions in Centre-North

Reference: **IP/00/207** Date: 2000-03-01 : Commission approves France's regional planning grant map (PAT) for 2000-2006

Reference: **IP/00/206** Date: 2000-03-01 : Commission approves aid to Delon Filament GmbH (Germany)

Reference: **IP/00/203** Date: 2000-03-01 : Commission closes investigation into proposed Belgian regional aid map

Reference: **IP/00/182** Date: 2000-02-23 : Statement by Commissioner Monti concerning the control of fiscal state aids

Reference: **IP/00/161** Date: 2000-02-15 : Commission authorises R&D aid in motor vehicle sector in Spain

Reference: **IP/00/160** Date: 2000-02-15 : Commission decides that Kvaerner Warnow Werft GmbH will have to reimburse DM 12.6 Mio ( 6.3 Mio) of aid due to exceeding of capacity limitation in 1997.

Reference: **IP/00/159** Date: 2000-02-15 : The Commission bans



regional aid of LIT 46 billion (24 million) for Fiat Rivalta (Italy)

Reference: **IP/00/158** Date: 2000-02-15 : Commission approves aid to SIDMAR for five environmental projects One negative decision

Reference: **IP/00/157** Date: 2000-02-15 : Commission authorises continued ecological tax reform in Germany under state aid rules

Reference: **IP/00/103** Date: 2000-02-02 : Commission opens formal investigation into State aid to Kvaerner Warnow Werft

Reference: **IP/00/102** Date: 2000-02-02 : Commission approves settlement between Elf Aquitaine and German authorities in the Leuna case Decision regarding initial State aid still suspended.

Reference: **IP/00/101** Date: 2000-2-02 : Commission investigates State aid Dutch manure processing companies

Reference: **IP/00/100** Date: 2000-02-02 : Commission approves restructuring aid for Armaturen Technik Magdeburg (Germany).

## COURT OF JUSTICE / COURT OF FIRST INSTANCE

### DEVANT LE TRIBUNAL

#### Aff. T-318/99

##### Avia Nederland Coöperatie UA/Commission

Annulation de la décision de la Commission C(1999)2539 def, du 20 juillet 1999, relative aux aides accordées par les Pays-Bas à 633 stations-services situées dans la région frontalière entre les Pays-Bas et l'Allemagne

#### Aff. T-319/99

##### Federación Nacional de Empresas, Instrumentación Científica, Médica, Técnica y Dental (FENIN) / Commission

Annulation de la décision de la Commission (SG(99) D/7.040), du 26 août 1999, rejetant la plainte déposée par la partie requérante contre «Entes Gestores del Sistema Nacional de Salud» espagnols sur le fondement de l'article 82 CE, concernant les conditions de paiement imposées par les «Entes Gestores del sistema Nacional de Salud» (organismes gestionnaires du système public de santé) espagnols à leurs fournisseurs de produits sanitaires ainsi que d'autres pratiques prétendument anti-concurrentielles desdits organismes

#### Aff. T-320/99

##### W.F. Milder/Commission

Voir l'affaire T-318/99

#### Aff. T-321/99

##### Garage en Tankstation

##### Milder/Commission

Voir l'affaire T-318/99

#### Aff. T-323/99

##### Industrie Navali Meccaniche Affini SpA Società in Liquidazione (INMA) et Italia Investimenti SpA (Itainvest) / Commission

Annulation de la décision de la Commission C(1999)2532 def, du 20 juillet 1999, déclarant incompatible avec le marché commun l'aide accordée par l'Italie, par l'intermédiaire du holding public Itainvest (ex GEPI) au chantier naval Industrie Navali Meccaniche Affini (INMA)

#### Aff. T-328/99

##### Anthony Goldstein/Commission

Une demande en indemnité visant à obtenir la réparation du préjudice prétendument subi par le requérant suite au refus de la Commission

d'adopter les mesures provisoires demandées par celui-ci dans le cadre de la procédure administrative relative à une plainte tendant à faire constater l'infraction aux articles 81 et 82 du traité CE par le «Bar Council»

#### Aff. T-339/99

##### Achten vof / Commission

Voir l'affaire T-318/99

#### Aff. T-342/99

##### Airtours plc / Commission

Annulation de la décision de la Commission, du 22 septembre 1999, relative à une procédure d'application du règlement (CEE) n. 4064/89 du Conseil (affaire n. IV/M.1524 - Airtours/First Choice) déclarant incompatible avec le marché commun et le fonctionnement de l'Accord EEE l'opération de concentration visant à l'acquisition du contrôle total de First Choice plc par Airtours plc

#### Aff. T-346/99

##### Diputación Foral de Alava/Commission

Annulation de la décision de la Commission (SG(99)D/7814), du 29 septembre 1999, d'engager la procédure prévue au paragraphe 2 de l'article 88 CE en ce qui concerne les aides fiscales à l'investissement octroyées par la «Diputación Foral de Alava» sous forme d'une réduction de l'assiette imposable de l'impôt des sociétés applicable aux entreprises nouvellement créées

#### Aff. T-347/99

##### Diputación Foral de Gipuzkoa/Commission

Annulation de la décision de la Commission (SG(99)D/7814), du 29 septembre 1999, d'engager la procédure prévue au paragraphe 2 de l'article 88 CE en ce qui concerne les aides fiscales à l'investissement octroyées par la «Diputación Foral de Gipuzkoa» sous forme d'une



réduction de l'assiette imposable de l'impôt des sociétés applicables aux entreprises nouvellement créées

**Aff. T-348/99**

**Diputación Foral de Bizkaia/Commission**

Annulation de la décision de la Commission (SG(99)D/7814), du 29 septembre 1999, d'engager la procédure prévue au paragraphe 2 de l'article 88 CE en ce qui concerne les aides fiscales à l'investissement octroyées par la «Diputación Foral de Bizkaia» sous forme d'une réduction de l'assiette imposable de l'impôt des sociétés applicables aux entreprises nouvellement créées

**Aff. T-354/99**

**Kuwait Petroleum (Nederland) BV / Commission**

Voir l'affaire T-318/99

**Aff. T-5/00**

**Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied / Commission**

Annulation de la décision de la Commission, du 26 octobre 1999, relative à une procédure d'application de l'article 81 du traité CE (Affaire n. IV/33.884 - Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied en Technische Unie) concernant le marché de l'électrotechnique aux Pays-Bas

**Aff. T-13/00**

**S.W.M. Baltussen e.a. / Commission**

Voir l'affaire T-318/99

**Aff. T-14/00**

**CAV Ulestraten-Schimmert-Hulsberg e.a. / Commission**

Voir l'affaire T-318/99

**Aff. T-15/00**

**Auto- en Carrosserie bedrijf Ambting BV e.a. / Commission**

Voir l'affaire T-318/99

**Aff. T-29/00**

**Deutsche Post AG/Commission**

Annulation de la décision de la Commission, du 14 décembre 1999, infligeant à la requérante, conformément à l'article 14, paragraphe 1, b) et c) du règlement CEE n. 4064/89 du Conseil, du 21 décembre 1989, relatif au contrôle des opérations de concentration entre entreprises, une amende d'un montant de 100.000 Euros, pour avoir donné des indications inexactes et dénaturées à l'occasion d'une notification présentée en application de l'article 4 dudit règlement et, pour avoir fourni des renseignements inexacts en réponse à une demande de renseignement faite en application de l'article 11 (affaire IV/1610 - Deutsche Post/trans-oflex)

**Aff. T-35/00**

**Anthony Goldstein / Commission**

Annulation de la décision de la Commission, du 21 janvier 2000, concernant une demande de renseignements adressée à la Commission par les représentants du requérant suite à la décision de la juridiction nationale saisie par celui-ci de demander certaines informations en application de l'article 10 du traité CE (ex article 5) et conformément à la communication relative à la coopération entre la Commission et les juridictions nationales pour l'application des articles 81 et 82 du traité CEE

**Aff. T-40/00**

**Consorzio industrie fiammiferi (CIF) / Commission**

Annulation de la décision de la Commission, du 29 mars 1999, refusant de communiquer au

requérant certains documents transmis à l'«Autorità Garante della Concorrenza» aux fins d'une enquête relative à l'application des articles 81 et 82 du traité CE menée par ladite autorité

**Aff. T-44/00**

**Mannesmannröhren-Werke AG/ Conseil**

Annulation de la décision C(1999) 4154 final de la Commission, du 8 décembre 1999, relative à une procédure d'application de l'article 81 du traité CE (IV/E-1/35.860-B tubes et tuyaux en acier sans soudure)

**Aff. T-45/00**

**Conseil national des professions de l'automobile (CNPA) e.a. / Commission**

Annulation du règlement de la Commission (CE) n. 2790/1999, du 22 décembre 1999, concernant l'application de l'article 81, paragraphe 3, à des catégories d'accords verticaux et de pratiques concertées

**Aff. T-48/00**

**British Steel Ltd, anciennement British Steel plc / Commission**

Voir l'affaire T-44/00

**Aff. T-50/00**

**Dalmine SpA / Commission**

Voir l'affaire T-44/00

**Aff. T-52/00**

**Coe Clerici Logistics SpA/ Commission**

Annulation de la décision de la Commission, du 20 décembre 1999, de classer la plainte de la requérante relative à un prétendu abus de position dominante de la part de la société concessionnaire d'un des quais du port d'Ancona, en ce qui concerne les activités de déchargement de charbon sur ce quai



**Aff. T-58/00**

**Bond Van De Fegarbel-Beroepsverenigingen e.a. / Commission**  
Voir l'affaire T-45/00

**Aff. T-59/00**

**Compagnia Portuale Pietro Chiesa scarl / Commission**

Annulation de la décision de la Commission, du 22 décembre 1999, de ne pas donner suite à la plainte de la requérante visant à faire constater la violation des dispositions combinées des articles 86 et 82 du traité CE de la part de la Compagnia Unica Laboratori Merci Varié (CULMV) en sa position de fournisseur privilégié de services portuaires et de main-d'oeuvre au port de Gênes

**Aff. T-67/00**

**NKK Corporation / Commission**  
Annulation de la décision C(1999)4154 final de la Commission, du 8 décembre 1999, relative à une procédure d'application de l'article 81 du traité CE (IV/E-1/35.860-B tubes et tuyaux en acier sans soudure) ou, à titre subsidiaire, la réduction de l'amende infligée à la requérante

**Aff. T-68/00**

**Nippon Steel Corporation / Commission**  
Voir l'affaire T-67/00

**Aff. T-71/00**

**Kawasaki Steel Corporation / Commission**  
Voir l'affaire T-67/00

**Aff. T-77/00**

**Esat Telecommunications Ltd / Commission**  
Annulation de la décision de la Commission SG(2000) D/100598, du 18 janvier 2000, portant rejet de la plainte de la requérante relative à un prétendu abus de position dominante de la part de Telecom

Éireann, l'opérateur titulaire de télécommunications en Irlande, visant à empêcher ou retarder l'accès de la requérante au marché irlandais de services de télécommunications (COMP/35.979 Esat Telecom/Telecom Éireann)

**Aff. T-78/00**

**Sumitomo Metal Industries Ltd / Commission**  
Voir l'affaire T-67/00

**DEVANT LA COUR**

**Aff. C-462/99**

**Connect Austria Gesellschaft für Telekommunikation GmbH et Telekom-Control-Kommission - Mobilkom Austria AG**  
Préjudicielle - Verwaltungsgerichtshof - Interprétation de l'art. 5 bis, par. 3, de la directive 90/387/CEE du Conseil, du 28 juin 1990, relative à l'établissement du marché intérieur des services de télécommunication par la mise en oeuvre de la fourniture d'un réseau ouvert de télécommunication, telle que modifiée par la directive 97/51/CE du Parlement européen et du Conseil du 6 octobre 1997 - Pourvoi devant une instance indépendante contre les décisions de l'autorité réglementaire - Effet direct - Interprétation de l'art. 86 du traité CE (devenu article 82 CE), de l'art. 90 du traité CE (devenu art. 86 CE), de l'art. 2 de la directive 96/2/CE de la Commission, du 16 janvier 1996, modifiant la directive 90/388/CEE en ce qui concerne les communications mobiles et personnelles, et des art. 9 et 11 de la directive 97/13/CE du Parlement européen et du Conseil du 10 avril 1997 relative à un cadre commun pour les autorisations générales et les licences individuelles dans le secteur des services de télécommunications - Législation nationale en matière d'attribution de

fréquences dans la bande 1800 MHz

**Aff. C-475/99**

**Firma Ambulanz Glöckner et Landkreis Südwestpfalz**  
Préjudicielle - Oberverwaltungsgericht Rheinland-Pfalz - Interprétation des art. 90, par. 1, du traité CE (devenu art. 86 CE) et 85 du traité CE (devenu art. 81 CE) - Législation nationale qui restreint l'accès à l'activité du transport de malades en fonction de la demande objective et crée, de fait, des monopoles locaux

**Aff. C-480/99 P**

**Gerry Plant e.a. / Commission - South Wales Small Mines Association**  
Pourvoi formé contre l'ordonnance du Tribunal de première instance (deuxième chambre) du 29 septembre 1999, J.G. Evans e.a. / Commission (T-148/98 et T-162/98), par laquelle le Tribunal a rejeté comme irrecevables des recours visant à l'annulation d'une décision de la Commission, du 30 juillet 1998 (affaire IV/E-3/SWSMA), rejetant les plaintes déposées par les requérants contre le Central Electricity Generating Board (CEGB) et British Coal, relatives à une prétendue entente concernant les prix de vente du charbon destiné à la production d'électricité

**Aff. C-482/99**

**France / Commission**  
Annulation de la décision C(1999)3148 final de la Commission concernant les aides accordées par la France à l'entreprise Stardust Marine

**Aff. C-497/99 P**

**Irish Sugar plc / Commission**  
Pourvoi formé contre l'arrêt du Tribunal de première instance (troisième chambre) du 7 octobre





1999, Irish Sugar plc / Commission (T-228/97) - Annulation de la décision de la Commission, du 14 mai 1997, relative à une procédure d'application de l'art. 86 du traité CE (devenu art. 82 CE) (IV/34.621, 35.059/F-3 - Irish Sugar plc)

**Aff. C-499/99**

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