FRANKLIN PIERCE
LAW CENTER LIBRARY
CONCORD, N.H.

JUL 01 2004

January, 2003

Volume 26 Issue 1

COMPETITION LAW IN THE EUROPEAN COMMUNITIES

Copyright © 2003 Bryan Harris
ISSN 0141-769X

CONTENTS

1 COMMENT

Economics of cartel control

2 PRICE FIXING (CONCRETE BARS)

The Federacciai Case

4 PRICE FIXING (FOOD FLAVOURING)

The Ajinomoto Case

6 PRICE FIXING (SPECIALITY GRAPHITES)

The SGL Case

12 SALES RESTRICTIONS (INDUSTRIAL GASES)

The NLNG Case

11 STATE AIDS (INDUSTRIAL GASES)

The Linde Case

18 INDEX, 2002

Subjects
Industries
Cases

MISCELLANEOUS

The Daimler Chrysler / DT Case 5
The 3G Case 10
The Leroy Merlin / Brico Case 25

Economics of cartel control

At a forum held on 3rd January 2003, under the aegis of the American Enterprise Institute in Washington, discussion centered on the problems of international control of cartels. Several of the speakers were experts in the competition rules under the Treaty establishing the European Community; and the point was fairly made that the European Union had been in the forefront of moves for seeking some measure of international control through the World Trade Organisation. Two subjects of particular interest from a European point of view were the focus of speakers' attention.

One of these was the question of political influence over the decisions of the anti-trust authority in question: in this case, the Commission of the European Communities. Two of the speakers thought there was a distinction between European and American practice, in that the Commission was allegedly more open to political influence than its American counterparts. However, it was accepted that there was a difference between the technical findings of the officials responsible for the Commission's investigations and the collective judgments of the Commissioners. There was little or no political influence at the official level; and the detachment of the officials' findings could be reinforced if an independent panel were to monitor the Commissioners' handling of official recommendations and if, as in the United States, the officials' views were more strongly supported by professional economists' involvement in the process of investigation. The greater the technical and professional elements, in terms of the legal and economic studies, forming part of the Commission's investigations, the less likelihood there would be of political interference in the collegiate decisions of the Commissioners.

To illustrate the economist's role, Professor Simon Evenett of the University of Bern, gave a paper showing the results of an economic study of the Vitamin Cartel case, with particular reference to the costs and benefits of cartel control. He pointed out that, while different countries throughout the world had different standards of control, cartels were increasingly tempted to target countries with weaker anti-trust systems: economic disadvantages experienced in the European Union and the United States might well be offset by advantages experienced in other countries of the world. Nevertheless, taking the European Union as an example, it appeared that the overcharging in Member States during the ten-year period of the Vitamin Cartel's existence accounted for an average of $122m for each of those years and that this single cartel's overcharging represented 96% of the annual costs of running the control system in the European Union. The message for countries with weaker controls was only too clear. ■

PRICE FIXING (CONCRETE BARS): THE FEDERACCIAIA CASE

Subject: Price fixing
Production restrictions
Trade associations
ECSC Treaty

Industry: Concrete reinforcing bars

Parties: Federacciai (and members listed below)

Source: Commission Statement IP/02/1908, dated 17 December 2002

(Three points of interest arise in this otherwise standard cartel case: first, the fact that the case fell under the now defunct ECSC Treaty; second, the fact that the case was limited to national infringements which, had the products not fallen outside the scope of the ECSC Treaty, would have been dealt with by national authorities; and, third, the fact that under the ECSC Treaty there is no power to fine trade associations, only the members.)

The Commission has imposed fines totalling more than €85 million on eight Italian firms for having organised, between 1989 and 2000, a cartel on the market in concrete reinforcing bars, a product used in the construction industry.

Following a detailed investigation during which it carried out on-the-spot inspections in 2000, the Commission found that eight firms took part, with the aid of the Italian trade association Federacciai, in an agreement aimed at fixing the prices of reinforcing bar in bars or coils in Italy. Reinforcing bars are a long steel product, usually with a ribbed surface, for strengthening columns and other concrete structures in buildings.

The firms include Alfa Acciai SpA, Feralpi Siderurgica SpA, Ferriere Nord SpA, IRO Industrie Riunite Odolesi SpA, Riva Acciaio SpA and Siderpotenza SpA, the latter being controlled by Lucchini SpA. Two other firms, Leali SpA and Acciaierie e Ferriere Leali Luigi SpA, were considered together since they formed a single entity until they were split up in 1998, the latter being in liquidation. Valsabbia Investimenti SpA and Ferriera Valsabbia SpA were also treated as one company since they are the result of a split in early 2000.

These firms accounted for around 30% of reinforcing bar produced in Italy in 1989 and more than 80% in 2000, the number of market operators having fallen from about 40 to fewer than a dozen. National cartels are not normally investigated by the Commission; but the relevant product is covered by the Treaty establishing the European Coal and Steel Community (ECSC), under which the Commission has exclusive jurisdiction. Although the ECSC Treaty expired on 23 July 2002, the Commission is entitled to take a decision because the facts took place before that date. (See the Communication from the Commission

concerning certain aspects of the treatment of competition cases resulting from the expiry of the ECSC Treaty, published in Official Journal C 152 of 26 June 2002. Point 31 of the Communication states: "If the Commission, when applying the competition rules to agreements, identifies an infringement in a field covered by the ECSC Treaty, the substantive law applicable will be, irrespective of when such application takes place, the law in force at the time when the facts constituting the infringement occurred. In any event, as regards procedure, the law applicable after the expiry of the ECSC Treaty will be the EC law".)

The Commission's investigation demonstrated that, for a period of ten and a half years between 1989 and 2000, the cartel members fixed the amounts to be added to the base price for each product according to their size: reinforcing bars are sold in some twenty diameters ranging from 5 to 40 mm. From April/May 1992 until 2000, the cartel members also fixed the base price and, until September 1995, agreed on standard terms of payment. Lastly, between 1995 and 2000, they limited and/or monitored production and/or sales.

Some of the firms did not take part in all the above infringements or did so for only part of the time. Ferriere Nord, for example, took part from 1993 onwards. The practices in which Federacciai and the firms concerned engaged constitute extremely serious infringements of Article 65(1) of the ECSC Treaty. However, in accordance with the *Eurofer* case-law, the Commission has not fined Federacciai, as Article 65(5) of the ECSC Treaty does not provide for fines to be imposed on trade associations. The Commission imposed the following fines (in € million): Riva Acciaio SpA, 26.9; Lucchini SpA and Siderpotenza SpA, 16.14; Feralpi Siderurgica SpA, 10.25; Valsabbia Investimenti SpA and Ferriera Valsabbia SpA, 10.25; Alfa Acciai SpA 7.175; Leali SpA and Acciaierie e Ferriere Leali Luigi SpA in liquidazione, 7.175; IRO Industrie Riunite Odolesi SpA, 3.58; Ferriere Nord SpA, 3.57.

In calculating fines, the Commission takes account of the seriousness of the infringement, its duration and any aggravating or mitigating circumstances. It also bears in mind the market share and overall size of each firm in order to ensure that the fine has a deterrent effect. Although the infringement was extremely serious, the Commission took account of the specific circumstances of the case, involving a domestic market which was during the period in question subject to the special rules of the ECSC Treaty and on which the firms concerned enjoyed, during the early part of the infringement, a limited market share.

The fines imposed on Riva and Lucchini reflect their overall size, which is much larger than the other firms concerned. The fine imposed on Ferriere Nord is the result of a number of considerations. On the one hand, its participation in the infringement was of shorter duration; on the other hand, the fact that the firm had already been fined, in August 1989, for taking part in an agreement on the market in welded steel mesh was an aggravating circumstance. Lastly, Ferriere having been the only firm which provided the Commission with information enabling it to gain a better understanding of how the cartel operated, it was granted a reduction of 20% under the Commission's 1996 leniency notice. ■

PRICE FIXING (FOOD FLAVOURINGS): THE AJINOMOTO CASE

Subject: Price fixing
Market sharing
Information exchanges
Fines
Leniency

Industry: Food flavourings (nucleotides)
(Implications for most industries)

Parties: Ajinomoto Co Inc
Cheil Jedang Corp
Daesang Corp
Takeda Chemical Industries Ltd

Source: Commission Statement IP/02/1907, dated 17 December 2002

(Note. By recent standards, this is a small case; but it illustrates the kind of evidence on the basis of which the Commission's investigations establish the existence of a price fixing cartel.)

The Commission has fined Ajinomoto Co. Inc. of Japan and South Korean companies Cheil Jedang Corp. and Daesang Corp respectively €15.54m, €2.74m and €2.28m each for participating in a price-fixing cartel in nucleotides, a substance used to enhance the flavour in foods. Takeda Chemical Industries Ltd, another Japanese firm, was also found to be part of the cartel, but it was granted full immunity from fines for revealing to the Commission the existence of the illegal agreement.

The investigation started in 1999, when the Commission was approached by representatives of Takeda who revealed the cartel and provided decisive information about its operation in return for immunity from fines under the Commission's 1996 leniency policy. The other companies subsequently co-operated in the investigation.

According to the evidence in the Commission's possession, Ajinomoto, Takeda, Cheil and Daesang operated a cartel for nine years until 1998 during which they agreed to fix "target" prices, implement concerted price increases, allocate customers, as well as exchange information on sales figures. Nucleotide or nucleic acid is made from glucose and is used in the food industry to add flavour to foods.

The documents found by the Commission leave no doubt about the intent to rig the market. Daesang, for example, submitted a report of a meeting which states, in relation to the cartel operations in 1995: "everyone was thanked for their co-operation during 1995, which resulted in the effective implementation of

nucleotide price increases and everyone was asked to continue their co-operation in 1996 so as to increase further the nucleotide prices; [...] all participants showed their agreement by nodding or saying words to that effect".

Although the agreement was a very serious violation of European Union competition law, it considered that Takeda fulfilled the conditions for total immunity from fines. Because they co-operated in the investigation, Daesang, Ajinomoto and Cheil also qualified for a reduction in the fines. Daesang was granted a bigger reduction (50%) because whilst it was not the first to approach the Commission Takeda was it did so on its own initiative, before receiving any information request.

Ajinomoto is the world's biggest producer of nucleotides and was nearly twice as big as its competitors in terms of 1997 market shares figures, hence a higher fine to ensure a deterrent effect. The relatively small size of the fines is explained by the equally modest revenues procured by nucleotide of around €8m a year in the European Economic Area (the fifteen member states of the European Union, plus Norway, Iceland and Liechtenstein) during the infringement period. The four companies, however, accounted between them for virtually the whole of the sales worldwide. ■

The Daimler Chrysler / Deutsche Telekom Case

The Commission has decided to undertake an in-depth investigation into a proposed joint venture between Daimler Chrysler AG and Deutsche Telekom AG, operating a toll-collecting system for heavy lorries on German motorways. At present, the Commission is concerned that the transaction may have an adverse impact on competition in the emerging telematics services market in Germany. The joint venture (Toll Collect), has been created by Daimler Chrysler and Deutsche Telekom each having a 45% stake. French motorway operator Cofiroute will hold the remaining 10% of the share capital. The three have won a tender organised by German government for the installation and operation of a toll-collecting system for loaded lorries of a given weight on German motorways. Under the deal notified to the Commission, Toll Collect will also be able to offer value-added telematics applications: the Commission considers that the toll-collecting system could become a predominant platform for the provision of telematics services for transport and logistics. Daimler Chrysler is already active in the telematics market and, through the present operation, could possibly control the conditions of competition in this emerging market. Therefore, the Commission has, at this stage, serious doubts whether the transaction can be approved in its present form.

Source: Commission Statement IP/02/1957, dated 23 December 2002

PRICE FIXING (SPECIALITY GRAPHITES): THE SGL CASE

Subject: Price fixing
Market sharing
Information exchanges
Fines
Leniency

Industry: Speciality graphites
(Implications for other industries)

Parties: SGL Carbon AG and seven other companies listed below

Source: Commission Statement IP/02/1906, dated 17 December 2002

(Note. As in the report on the food flavouring case, the speciality graphites case reflects a trend in which the Commission is unearthing cartels in a number of relatively unknown industries. By the standards of twenty years ago, the present case would have been noted for its stiff fines; by recent standards, the level of fines is low to medium.)

The Commission has fined seven companies a total of €60.6m for participating in two price-fixing cartels in the market for speciality graphites, which are used to make industrial tools for the aerospace, electronics and other industries.

The investigation begun in the spring of 1999 during the graphite electrodes cartel probe, when GraphTech (formerly known as UCAR) revealed information about anti-competitive practices in the related market of speciality graphite products in return for immunity under the Commission's 1996 Leniency policy. On the basis of this information, the Commission opened a new investigation in March 2000, which has been concluded with the finding that eight companies participated in a worldwide cartel between 1993 and 1998, through which they fixed the price for isostatic speciality graphite products, exchanged sensitive commercial information and occasionally shared out the market.

The eight are : SGL Carbon AG of Germany, Carbone-Lorraine SA of France, Japanese firms Ibiden Co Ltd, Tokai Carbon Co Ltd, Toyo Tanso Co Ltd and Nippon Steel Chemical Co Ltd, US company GrafTech International Ltd and Dutch company Intech EDM BV. SGL and GrafTech were also found to have participated in a parallel price-fixing cartel for extruded graphite products.

"Speciality graphites" describe a group of graphite products for diverse applications. Isostatic graphite (produced through isostatic moulding), is used in EDM electrodes, continuous casting dies, hot press moulds and semiconductor applications; extruded graphite (produced through extrusion), is used in electrolytic anodes and cathodes, boats, sintering trays, crucibles. During the

infringement period, the companies concerned accounted for most of the EEA-wide market for both products.

The isostatic cartel began with a "Top Level meeting" in Gotenba (near Tokyo) in Japan, on 23 July 1993, at which the major producers agreed on the basic operating principles of the worldwide market. A monitoring and enforcement scheme was set up, which entailed the holding of regular multilateral meetings from top-executive level (always in Japan) to regional and national executives level. The cartel functioned for a period of more than four and a half years until 1998.

A meeting in Paris on 24-25 February 1993 also marked the beginning of price collusion between UCAR and SGL in the market of unmachined extruded speciality graphites. Throughout the duration of the cartel, the parties regularly discussed prices, including who would announce what price on which date. These arrangements went on for more than three and a half years. In each case the companies' conduct was a serious infringement of the competition rules, as set out in Article 81 of the Treaty establishing the European Community.

Individual amounts of the fines (in € million) amounted to: SGL, 27.75 (18.94 for isostatic graphite and 8.81 for extruded graphite); Toyo Tanso, 10.79; Carbone-Lorraine, 6.97; Tokai Carbon, 6.97; Ibiden, 3.58; Nippon Steel Chemical, 3.58; Intech, 0.98. For three of the companies: SGL, Tokai Carbon and GraphTech this was the second infringement to be uncovered by the Commission after the graphite electrodes decision of 2001. However, as the infringements were contemporaneous the Commission took the view that this did not qualify as recidivist behaviour and did not increase the fine for SGL and Tokai Carbon. GraphTech was granted full immunity because it revealed the cartel to the Commission.

The fine on SGL, however, reflects an increase of 50% on the basic amount calculated by the Commission because it was the ringleader in the isostatic cartel. But it also includes a 35% reduction for co-operating in the investigation before the Statement of Objections (SO) was sent. LCL, Ibiden, Tokai, Toyo Tanso and Nippon Steel Chemical were also given a reduction of 35% as they provided additional information before the SO was sent. In the case of Intech, the Commission established that it had acted to a considerable extend under instructions from Ibiden, for which it is the main distributor in Europe, and this justified a reduction of 40% in its basic amount. It benefited of a further reduction of 10% for not contesting the facts.

To calculate the fines in cartel decisions, the Commission takes account of the gravity of the infringement, its duration and the existence of any aggravating or mitigating circumstances. It also takes account of a company's share of the market concerned and of its overall size to ensure that the punishment is proportional and is sufficiently deterrent. Although a new leniency notice was adopted in February 2002, the 1996 notice is applicable to the present case because the infringement took place before February 2002. ■

SALES RESTRICTIONS (INDUSTRIAL GASES): THE NLNG CASE

Subject: Sales restrictions
Territorial restrictions
Use restrictions
Profit splitting

Industry: Liquified natural gas; industrial gases
(Implications for other companies and for other industries)

Parties: Nigeria LNG Ltd (NLNG)

Source: Commission Statement IP/02/1869, dated 12 December 2002

(Note. Producers of natural gas outside the European Union have had a tendency to hedge their contracts on supplies of gas with a number of conditions on resale and the like. The Commission has been investigating these contracts and, where possible, seeking settlements with the producers concerned. Norway, Nigeria, Algeria and Russia have all been involved. In a sense the Commission has the whip hand, since the producers risk penalties for infringing the rules on competition. At the same time, the Commission is clearly anxious to ensure that supplies continue: hence its comment on the expectation that supplies can still be profitable even when the offending clauses in the contracts are removed. An interesting feature of the Nigerian case is the "profit-splitting" clause, explained below. The Commission confidently, and perhaps rightly, says that this clause is incompatible with the rules on competition; but it would be useful to know the precise grounds for the Commission's position.)

The Commission has reached what it describes as a "landmark agreement" with Nigerian gas company Nigeria LNG Ltd (NLNG), which agreed to delete a clause preventing one of its European customers to re-sell the gas outside its national borders. NLNG also undertook not to introduce this clause in future contracts with European companies and confirmed both that its existing contracts did not contain profit-splitting mechanisms and that it would not introduce them in new contracts. Both the so-called territorial sales restrictions and profit splitting mechanism violate competition rules of the European Community. The Competition Commissioner, Mario Monti, expressed the hope that producers of gas in Nigeria and elsewhere would be able to preserve the essential revenues they derived from the sale of gas in the European Union while respecting the competition rules; and that other gas producers outside the European Union would feel encouraged to follow the example of NLNG so that the Commission would be able to bring overall investigation into this market to a successful end.

The Commission has been investigating for some time suspected territorial restrictions in gas supply contracts between non-EU producers and European companies which have the effect of preventing the sale of gas outside their national borders. The investigation relates not only to the Nigerian company

NLNG, but also to Gazprom of Russia and Sonatrach of Algeria, which together account for a large proportion of gas imported in the European Union. The Commission considers that these clauses are a serious breach of European competition law as they prevent cross border trade and undermine the progressive creation of a European single gas market.

NLNG is the second largest supplier of liquefied natural gas (LNG) in Europe with approximately 5 billion cubic metres of gas shipped every year to customers in Italy, Spain, France and Portugal. The investigation showed that only one of the many European contracts entered into by NLNG contained a territorial sales restriction, from which NLNG has agreed to release its customer. This means that, once the gas is delivered and paid for, the buyer is free to re-sell the gas wherever it wishes. This approach is fully compatible with European competition law. In the discussions and subsequent settlement with the Commission, NLNG also undertook not to introduce territorial restriction clauses and use restrictions into its future gas supply contracts. Use restrictions are clauses preventing the buyer from using the gas for other purposes than those agreed upon.

Furthermore, NLNG confirmed that none of its existing gas supply contracts contained so-called profit splitting mechanisms affecting European Union markets and that it would not introduce these in future contracts. Profit splitting mechanisms are clauses obliging the buyer to pass over to the producer a share of the profits made when re-selling the gas outside its national borders or when the gas is re-sold to a customer using the gas for a different purpose than that agreed upon. The Commission welcomes this clarification as it demonstrates that non-EU producers can successfully market their gas in the Union without making use of these clauses.

The Commission is hopeful that a satisfactory solution will also be found in the other cases it is investigating. The Russian gas company Gazprom has already informed the Commission that it will not introduce territorial restriction clauses in its future gas supply contracts and is currently negotiating the outstanding issues for the existing contracts.

This is the second breakthrough achieved in less than six months in terms of the application of the competition rules to the gas sector and will, in the Commission's view, contribute greatly to the creation of a single gas market in Europe to the benefit of industrial users and, ultimately, the consumer. In July, 2002, Statoil and Norsk Hydro of Norway, Europe's largest gas producer, undertook to sell their gas individually and to increase liquidity in the market by reserving significant quantities to new customers. In that settlement the Norwegian companies had also entered into a commitment not to introduce territorial restrictions and use restrictions in its gas supply contracts. ■

The Commission has decided to appeal to the European Court of Justice against the annulment by the Court of First Instance of its Decision prohibiting the acquisition of French plastic packaging machines maker Sidel by Swiss-Swedish carton packaging leader Tetra Laval.

Access to Patents: the 3G Case

The Commission has cleared a set of agreements aimed at giving third generation ("3G") mobile equipment manufacturers better access to patents. Improved access to patents is essential for a rapid introduction of 3G mobile services in Europe. As in the case of 3G network sharing, the Commission welcomes industry schemes to accelerate the introduction of 3G mobile services for European customers, provided that such schemes do not distort competition with respect to different 3G mobile technologies. In the present case, it appears unlikely that the proposed agreements will restrict competition between different 3G mobile technologies. However, given the novelty of the different 3G technologies involved, any significant change in the factual or legal situation would require re-assessment of the arrangements under the competition rules.

To produce 3G equipment manufacturers need to have access to those patents that are indispensable for using a particular technology. Those patents are usually referred to as "essential patents". However, a patent that is essential for using a particular technology may still compete with a patent that is essential for using another technology if the two technologies compete. Therefore, in assessing licensing agreements for 3G equipment the Commission must ensure that competition between competing essential patents is maintained.

The parties agreed to modify the initial structure of the agreements and establish five separate sets of arrangements, one for each technology, instead of combining all essential patents in one single platform. In addition, clearance under antitrust rules requires that each licensing agreement is limited to essential patents; that the agreements do not foreclose competition in related or downstream markets; that licensing should be carried out under non-discriminatory terms; that competitively sensitive information is not exchanged; that, 3G manufacturers should not be forced to pay for patents rights other than those they really need; and that the licensing arrangements should not discourage further R&D and innovation in the mobile communications sector.

The Commission has also taken into account that a number of major 3G essential patent holders (among those Ericsson, Nokia, Motorola, and Qualcomm) are not party to the notified arrangements. As a significant number of essential patents will remain outside the arrangement, the Commission has concluded that it appears unlikely that the notified agreements will be capable of restricting the competitive offer of 3G mobile technologies and 3G services to consumers. The parties to the agreements are: Alcatel, Cegetel, Electronics and Telecommunications Research Institute Korea (ETRI), France Telecom, Fujitsi, Royal KPN N.V., LG Information and Communications, Matsushita, Mitsubishi Electric, NEC, NTT DoCoMo, Robert Bosch GmbH, Samsung Electronics, Siemens AG, SK Telecom, Sonera Corporation, Sony and Telecom Italia Mobile.

Source: Commission Statement IP/02/1651, dated 12 November 2002

STATE AIDS (INDUSTRIAL GASES): THE LINDE CASE

Subject: State aids
Investment
Annulment (of Commission Decision)

Industry: Industrial gases
(Implications for many industries)

Parties: Linde AG
Commission of the European Communities
Federal Republic of Germany

Source: Court statement on the judgment, dated 17 October 2002, in Case T-98/00, (*Linde AG v Commission of the European Communities*)

(Note. State aids can in certain cases be justified where the subsidy comprises an investment reflecting the price which would have been agreed between economic operators in the same situation. If the subsidy exceeds that price, the difference may be treated as state aid. In other words, if the state or state agency is acting in the same way as a private investor, the aid which it grants is treated as an investment and is not normally caught by the general prohibition of state aids. In the present case, the Commission's decision holding that a subsidy granted through the agency of a public body responsible for restructuring undertakings of the former German Democratic Republic was largely annulled.)

Facts and procedure

The applicant is a German undertaking which produces and distributes industrial gases. It owns, *inter alia*, a production plant in Leuna (Sachsen-Anhalt). By a contract concluded on 22 April 1993, the public-law body responsible for the administration, restructuring and privatisation of undertakings of the former German Democratic Republic, "the THA") sold the business activities of Leuna Werke AG (the legal predecessor to Leuna-Werke GmbH, "LWG"), an undertaking located in Leuna, producing amine and dimethylformamide, to UCB Chemie GmbH ("UCB"), a German subsidiary of the Union Chimique Belge group.

That contract was supplemented by a number of ancillary contracts which included an agreement of 22 April 1993 in which the THA and LWG undertook to supply specific quantities of carbon monoxide, a gas used in the production of amine and dimethylformamide, to UCB at market price, for a period of 10 years, renewable for an indefinite period. Article 6(4) of that agreement provided that LWG was entitled to terminate the agreement in two circumstances, namely, if UCB concluded another supply agreement with a third party on terms not less favourable than those contained in that agreement, or if UCB built its own carbon

monoxide production facility. In the latter case, the THA would pay UCB an investment subsidy of up to 5 million DM.

Performance of the supply agreement of 22 April 1993 caused LWG and the THA to incur substantial losses, of approximately 3.5 million DM per year. The carbon monoxide production facility which they operated for that purpose was particularly old and its production costs were high. As UCB had decided not to build its own facility and there was no other producer of carbon monoxide operating in Leuna, LWG was not entitled to terminate the agreement under Article 6(4) of that agreement. LWG and the BvS, the successor to the THA, therefore looked for an undertaking which was prepared to build and operate a carbon monoxide production facility and to ensure, in their place, the long-term supply of carbon monoxide to UCB.

Thus, in June 1997 the BvS, LWG, UCB and the applicant concluded an agreement in which the applicant undertook to build, within 18 months, a carbon monoxide production facility which it would incorporate into its hydrogen production plant in Leuna, to operate that facility, and to supply specific quantities of carbon monoxide to UCB. That agreement also provided that the BvS and LWG were to grant the applicant an investment subsidy of 9 million DM (the subsidy at issue), the remaining investment costs, 3.586 million DM, being borne by the applicant. The agreement further stipulated that the supply agreement of 22 April 1993 would terminate when the applicant started to supply carbon monoxide to UCB, or, at the latest, 18 months after the conclusion by those two undertakings of a contract for the supply of carbon monoxide or of the agreement of June 1997, as the case may be.

Contemporaneously with the agreement of June 1997, the applicant concluded a contract with UCB to supply it with carbon monoxide for a period of 15 years, renewable for 5-year periods. Article 2(2) of the agreement of June 1997 states that the supply contract is to be regarded as a similar contract for the purposes of Article 6(4)(i) of the [supply agreement of 22 April 1993]. In October 1998 the applicant started to supply carbon monoxide to UCB under the 1997 supply contract.

Following a meeting with the German authorities on 15 May 1998, the Commission questioned them about the subsidy at issue. The German authorities answered the Commission's questions in a letter of 7 August 1998. By letter of 18 September 1998, the Commission requested additional information, which was provided by letter of 3 December 1998. By letter of 30 March 1999, the Commission informed the German Government of its decision to initiate the procedure under Article 88(2) EC, and requested it to submit its observations and reply to a number of questions. By way of publication of the letter in the *Official Journal of the European Communities* of 10 July 1999, interested parties were informed of the initiation of that procedure and invited to submit any comments they might have. By letter of 25 May 1999, the German Government submitted its observations and replied to the questions put by the Commission. No other interested party responded to the publication of the Commission's letter. On 18

January 2000, the Commission adopted Commission Decision 2000/524/EC on the State aid granted by Germany to Linde AG (the contested decision).

The operative part of the contested decision provides as follows:
Article 1
The aid granted to Linde AG by Germany in the form of a grant for the construction of a carbon monoxide production facility in Leuna (Saxony-Anhalt) is compatible with the common market as regards the portion which, in accordance with the cumulation rules, does not exceed the 35% ceiling laid down for national regional aid in Saxony-Anhalt.
Article 2
The aid granted to Linde AG by Germany in the form of a grant for the construction of a carbon monoxide production facility in Leuna (Saxony-Anhalt) is incompatible with the common market under Article 87(1) of the EC Treaty as regards the portion which, in accordance with the cumulation rules, exceeds the 35% ceiling laid down for national regional aid in Saxony-Anhalt.
Article 3
...

Procedure and forms of order sought by the parties

By application lodged at the Registry of the Court of First Instance on 21 April 2000, the applicant brought this action for partial annulment of the contested decision. The applicant claims that the Court should annul Articles 2 and 3 of the contested decision.

Law

In support of its action, the applicant raises a single plea, alleging infringement of Article 87(1) of the EC Treaty. That plea has two parts, a principal claim and an alternative claim. The applicant's principal claim is that the subsidy at issue is not State aid. In the alternative, it claims that the subsidy does not distort competition and does not affect trade between Member States. The Federal Republic of Germany raises a second plea, alleging a failure to state reasons.

It is appropriate to begin by examining the first part of the first plea. It is apparent from the documents before the Court that in 1996 the BvS, which is the successor to the THA and which owned the carbon monoxide production plant operated by LWG at Leuna, was faced with a financial problem owing to the combination of the following circumstances:
· in the supply agreement of 22 April 1993, the THA and LWG undertook to supply specific quantities of carbon monoxide to UCB, at a price equivalent to the market price, for a period of 10 years, renewable for a indefinite period;
· it later became apparent, however, that the supply price would not cover the cost of production of carbon monoxide by LWG;
· the particularly high costs were occasioned by the obsolescence of the plant and technology used by LWG;
· in addition, the supply price had been fixed in the · ultimately unrealised · expectation that a second purchaser of carbon monoxide would set up business at

the Leuna site, which would have enabled the LWG production unit to be operated more profitably;

· as a result of performance of that supply agreement, the BvS and LWG incurred losses of approximately 3.5 million DM per year which, from 1998, would have increased to 5 million DM per year;

· accordingly, if that agreement had been performed until its date of expiry, namely 30 April 2003, rather than being terminated in October 1998, the BvS and LWG would have suffered aggregate losses of more than 15 million DM in the period after October 1998;

· LWG was not entitled to terminate the supply agreement of 22 April 1993 under Article 6(4) (see paragraph 3 above) since neither of the two conditions set out in that provision were met in the present case;

· that was because, first, UCB had ruled out the possibility of building and operating its own carbon monoxide production facility;

· second, there was no other carbon monoxide producer on the Leuna site which UCB could have used as a supplier;

· UCB could not have used a supplier who was not based on the site, since carbon monoxide must be produced near the user.

In the light of those factors, the Court holds that, from a commercial point of view, it was logical for the BvS and LWG to try to find a solution enabling them to put an end to their obligation to supply carbon monoxide to UCB while continuing to honour their commitments to it. More specifically, the BvS and LWG were entitled to enter into an agreement with a third undertaking which was prepared to build and operate a new carbon monoxide production facility in Leuna in order to supply UCB, in their place, on terms not less favourable than those of the supply agreement of 22 April 1993.

In addition, it is apparent from a document appended to the reply, the substance of which has not been challenged by the Commission, that even though the decision to engage the applicant meant that investment costs could be reduced to 12.586 million DM, provision by the applicant of carbon monoxide to UCB on terms not less favourable than those of the supply agreement of 22 April 1993 would have led the applicant to incur substantial losses, had it had to bear all those costs itself. The decision by the BvS and LWG to contribute to the investment costs by granting the applicant a subsidy which was substantially lower than the aggregate losses which they would have suffered if they had continued to perform that agreement until the date of its expiry was therefore objectively justified. No economic operator would have made such an investment and, at the same time, assumed such a supply obligation toward UCB without a substantial third-party contribution toward the costs involved. In that respect, it is of no relevance in economic terms whether the contribution was intended as advance compensation for the future losses which would inevitably have resulted from the provision of carbon monoxide to UCB in the loss-making conditions mentioned above, or as the assumption of a portion of the initial investment costs.

In the light of the foregoing considerations, the Court finds, first, that as the Commission correctly points out in the contested decision and its written submissions, that comprehensive arrangement constitutes a new agreement,

legally separate from the privatisation contract and the supply agreement of 22 April 1993. That is particularly clear from the fact that it involves a new contract party, namely the applicant, that it modifies the rights and obligations of the various parties and that it provides for the payment of an investment subsidy substantially higher than that originally agreed. The Commission's assertion that, in the present case, the German authorities were acting in pursuit of a public policy of privatisation and not under normal market conditions must therefore be rejected.

Second, the comprehensive arrangement described above represents a normal commercial transaction in the course of which the BvS and LWG behaved as rational operators in a market economy. It is evident that they were motivated primarily by commercial considerations and did not have regard to any economic or social policy objectives.

Third, the contested subsidy is, in principle, an essential part of the comprehensive arrangement and is, like that arrangement, justified on commercial grounds.

Fourth, in the contested decision, the Commission did not examine whether the comprehensive arrangement and the investment subsidy at issue, which was integral to that arrangement, constituted, in whole or in part, a normal commercial transaction.

The Commission failed to examine whether the value of the investment subsidy reflected in general terms the price which would have been agreed between economic operators in the same situation. In any event, only the portion of the subsidy in excess of that price could be regarded as State aid. Nor did Commission establish whether the sum paid to the applicant as consideration for its contractual obligations exceeded the cost of those obligations and, if so, the amount by which it did so. It has therefore failed to prove to the requisite legal standard that the subsidy at issue constitutes, in whole or in part, aid within the meaning of Article 87(1) of the EC Treaty. In the light of the foregoing, the first part of the first plea must be upheld.

The Court's Ruling

The Court:

1. Annuls Articles 2 and 3 of Commission Decision 2000/524/EC of 18 January 2000 on the State aid granted by Germany to Linde AG;
2. Orders the Commission to bear its own costs and pay those of the applicant;
3. Orders the Federal Republic of Germany to bear its own costs.

The Court cases reported in this Newsletter are taken from the website of the Court of Justice of the European Communities. The contents of this website are freely available. Reports on the website are subject to editing and revision.

INDEX, 2002

Subject

ABUSE OF DOMINANT POSITION		
AIRPORTS	ADP	NOV-02-267
AIRPORTS	HUNTSDOWN	APR-02-086
INTERNET ACCESS	WANADOO	JAN-02-009
MOBILE PHONES	KPN	APR-02-079
PHARMACEUTICAL DATA	IMS	OCT-02-227
POSTAL SERVICES	BELGIAN PO	FEB-02-029
TELECOMMUNICATIONS	DEUTSCHE TELEKOM	JUN-02-130
ACQUISITIONS		
ACCOUNTANCY	ANDERSEN	JUL-02-162
		SEP-02-202
BUILDING MATERIALS	HANIEL	MAY-02-105
CHEMICAL	DEUTSCHE BP	JUL-02-157
COMPUTERS	HP/COMPA	FEB-02-027
	IBM/HITACHI	SEP-02-207
CROP CONTROL	BAYER/AVENTIS	MAY-02-102
CRUISE LINES	CARNIVAL	MAY-02-110
ELECTRICITY	LEG/SEEBOARD	SEP-02-218
ENERGY	GV	SEP-02-205
EXPRESS MAIL	DEUTSCHE POST/DHL	NOV-02-259
INDUSTRIAL GASES	BOC/AIR LIQUIDE	NOV-02-266
PETFOODS	MASTERFOODS	MAR-02-055
POWER	GE/ENRON	MAY-02-109
SHIPPING	P&O STENA	SEP-02-212
TOUR OPERATORS	AIRTOURS	JUN-02-138
ADMISSIBILITY		
BROADCASTING	SATELLIMAGES	APR-02-087
ANNULMENT		
BANKING	STARDUST MARINE	JUL-92-165
ELECTRICAL EQUIPMENT	SCHNEIDER	NOV-02-264
PACKAGING	TETRA LAVAL	NOV-02-261
POLYVYNILCHLORIDE(PVC)	LVM	DEC-02-288
TOUR OPERATORS	AIRTOURS	JUN-02-138
ASSOCIATIONS OF UNDERTAKINGS		
BARRISTERS	WOUTERS	MAR-02-060
BLOCK EXEMPTION		
INSURANCE	COMMISSION DRAFT	AUG-02-182
MOTOR VEHICLES	COMM REGULATION	AUG-02-191
		OCT-02-232
COLLECTIVE DOMINANCE		
TOUR OPERATORS	AIRTOURS	JUN-02-138
COMPETITION RULES		
SPORT	COMM MEMORANDUM	JUN-02-136
COMPLAINTS		
BROADCASTING	SATELLIMAGES	APR-02-087
POSTAL SERVICES	BELGIAN PO	FEB-02-029
SPORT	COMM MEMORANDUM	JUN-02-136
	IOC	SEP-02-208
CONCENTRATIONS		
ALL INDUSTRIES	COMM GUIDELINES	AUG-02-185

CONCERTED PRACTICES		
AUCTIONEERS	CHRISTIE'S/SOTHEBY'S	MAY-02-106
CARBONLESS PAPER	CP CARTEL	JAN-02-006
PLASTERBOARD	LAFARGE/BPB	DEC-02-283
CONDITIONAL PURCHASING		
PHARMACEUTICAL DATA	IMS	OCT-02-227
CONDITIONS		
PETFOODS	MASTERFOODS	MAR-02-055
CONSUMERS		
ALL INDUSTRIES	COMM STATEMENT	APR-02-76
TOUR OPERATORS	AIRTOURS	JUN-02-138
COOPERATION AGREEMENTS		
AIRLINES	AIR FRANCE	JUL-02-158
AIRLINES	KLM	NOV-02-256
AIRLINES	LUFTHANSA	JUL-02-160
MOBILE PHONES	T-MOBILE/MM02	SEP-02-210
DE MINIMIS RULES		
ALL INDUSTRIES	COMM STATEMENT	JAN-02-011
		FEB-02-035
DIFFERENTIAL PRICING		
VIDEO GAMES	NINTENDO	NOV-02-252
DISCOUNTS		
PHARMACEUTICAL DATA	IMS	OCT-02-227
DISCRIMINATION		
AIRPORTS	ADP	NOV-02-267
DISTRIBUTION		
ALL INDUSTRIES	COMM STATEMENT	APR-02-76
LOUDSPEAKERS	B & W	JUL-02-156
MOTOR VEHICLES	COMM REGULATION	AUG-02-191
	DRAFT REGULATION	FEB-02-042
SOFTWARE	CHECK POINT	APR-02-077
DIVESTITURES		
ALL INDUSTRIES	COMM GUIDELINES	AUG-02-185
CROP CONTROL	BAYER/AVENTIS	MAY-02-102
DOMINANT POSITION		
BARRISTERS	WOUTERS	MAR-02-060
EUROPEAN CONVENTION ON HUMAN RIGHTS		
GENERAL	ROQUETTE	NOV-02-271
ECSC TREATY		
COAL AND STEEL	COMM STATEMENT	JUL-02-151
ENLARGEMENT		
ALL INDUSTRIES	COMM STATEMENT	JUL-02-151
EXCLUSIVE DISTRIBUTION		
MOTOR VEHICLES	DRAFT REGULATION	FEB-02-042
EXCLUSIVITY		
BROADCASTING	UEFA	JUN-02-133
SOFTWARE	CHECK POINT	APR-02-077
SPORT	COMM MEMORANDUM	JUN-02-136
EXPORT RESTRICTIONS		
VIDEO GAMES	NINTENDO	NOV-02-252
EXTRATERRITORIAL JURISDICTION		
NATURAL GAS	NORWEGIAN GAS	AUG-02-179

FINES		
ALL INDUSTRIES	COMM STATEMENT	SEP-02-201
ANIMAL FEED	DEGUSSA	JUL-02-154
BANKING	AUSTRIAN BANKS	JUN-02-127
CHEMICALS	AVENTIS/MERCK	DEC-02-286
CHEMICALS	DEUTSCHE BP	JUL-02-157
INDUSTRIAL GASES	DUTCH GAS CARTEL	AUG-02-177
PLASTERBOARD	LAFARGE/BPB	DEC-02-283
POSTAL SERVICES	BELGIAN PO	FEB-02-029
POWER	ASEA BROWN BOVERI	APR-02-092
VIDEO GAMES	NINTENDO	NOV-02-252
GROUPS OF UNDERTAKINGS		
BARRISTERS	WOUTERS	MAR-02-060
IMMUNITY		
ANIMAL FEED	DEGUSSA	JUL-02-154
IMPORT RESTRICTIONS		
BREWING	BREWERS' CARTELS	JAN-02-012
INFORMATION AGREEMENTS		
ANIMAL FEED	DEGUSSA	JUL-02-154
BREWING	BREWERS' CARTELS	JAN-02-012
CARBONLESS PAPER	CP CARTEL	JAN-02-006
CITRIC ACID	CITRIC ACID CARTEL	JAN-02-002
PLASTERBOARD	LAFARGE/BPB	DEC-02-283
INTELLECTUAL PROPERTY		
ALL INDUSTRIES	COMMISSION REPORT	FEB-02-032
INTERNATIONAL COMPETITION NETWORK		
ALL INDUSTRIES	COMM STATEMENT	JUL-02-151 AUG-02-176 OCT-02-226
INVESTIGATIONS		
GENERAL	ROQUETTE	NOV-02-271
JOINT VENTURES		
BREWING	BI/KARLSBERG	SEP-02-206
REAL ESTATE	MORGAN STANLEY	SEP-02-215
TRANSPORT	CONNEX	MAY-02-108
KNOW-HOW LICENSING		
ALL INDUSTRIES	COMMISSION REPORT	FEB-02-032
LENIENCY NOTICE		
ALL INDUSTRIES	COMM STATEMENT	JAN-02-001 SEP-02-201
LICENSING		
ALL INDUSTRIES	COMMISSION REPORT	FEB-02-032
BROADCASTING	IFPI	NOV-02-258
TELEVISION RIGHTS	M6/GT/SIC	OCT-02-229
LIMITATIONS		
BREWING	CARLSBERG/HEINEKEN	NOV-02-255
MARKET ENTRY		
AIRLINES	LUFTHANSA	JUL-02-160
TELECOMMUNICATIONS	DEUTSCHE TELEKOM	JUN-02-130
MARKET GROWTH		
TOUR OPERATORS	AIRTOURS	JUN-02-138
MARKET POWER		
COMMUNICATIONS	COMM GUIDELINES	AUG-02-186

MARKET SHARES		
NATURAL GAS	NORWEGIAN GAS	AUG-02-179
TOUR OPERATORS	AIRTOURS	JUN-02-138
MARKET SHARING		
BREWING	BREWERS' CARTELS	JAN-02-012
CARBONLESS PAPER	CP CARTEL	JAN-02-006
CHEMICALS	AVENTIS/MERCK	DEC-02-286
CITRIC ACID	CITRIC ACID CARTEL	JAN-02-002
ZINC PHOSPHATE	Z P CARTEL	JAN-02-004
MARKET TRANSPARENCY		
TOUR OPERATORS	AIRTOURS	JUN-02-138
MERGERS		
ALL INDUSTRIES	COMM STATEMENT	OCT-02-226
CRUISE OPERATORS	CARNIVAL	AUG-02-181
ELECTRICAL EQUIPMENT	SCHNEIDER	NOV-02-264
		NOV-02-251
PACKAGING	TETRA LAVAL	NOV-02-251
		NOV-02-261
STOCK EXCHANGES	COMM STATEMENT	DEC-02-276
TELEVISION	VIA DIGITAL	SEP-02-216
TOUR OPERATORS	AIRTOURS	NOV-02-251
MERGERS (AND CONSUMERS)		
ALL INDUSTRIES	COMM STATEMENT	APR-02-76
OIL	CARREFOUR	APR-02-76
OIL	TOTALFINA	APR-02-76
MERGERS (REFORM)		
ALL INDUSTRIES	COMM STATEMENT	JUN-02-126
MERGERS (REMEDIES)		
ELECTRICAL EQUIPMENT	SCHNEIDER	FEB-02-026
OIL	TOTALFINA	FEB-02-026
MERGERS (UNSCRAMBLING)		
CONTAINERS	TETRA LAVAL	FEB-02-026
		FEB-02-031
ELECTRICAL EQUIPMENT	SCHNEIDER	FEB-02-026
RETAILERS	KESKO/TUKO	FEB-02-026
TOYS	BLOKKER/TOYS 'R US	FEB-02-026
MONOPOLY		
GRAIN BRANDY	GERMAN G BRANDY	JUL-02-153
NATIONAL AUTHORITIES		
GENERAL	ROQUETTE	NOV-02-271
NATIONAL LAWS		
TELEVISION	VIA DIGITAL	SEP-02-216
TRANSPORT	CONNEX	MAY-02-108
NECESSITY		
MOTOR VEHICLES	VAUXHALL	SEP-02-224
NON-COMPETITION		
BREWING	CARLSBERG/HEINEKEN	SEP-02-206
OBLIGATIONS		
SHIPPING	ATLANTIC CONTAINER	MAR-02-057
PARALLEL TRADE		
VIDEO GAMES	NINTENDO	NOV-02-252
PATENT LICENSING		
ALL INDUSTRIES	COMMISSION REPORT	FEB-02-032

PREDATORY PRICING		
POSTAL SERVICES	BELGIAN PO	FEB-02-029
PRICE DIFFERENTIALS		
CARS	COMMISSION REPORT	MAR-02-052
MOBILE PHONES	KPN	APR-02-079
MOTOR VEHICLES	COMMISSION REPORT	AUG-02-188
PRICE FIXING		
ANIMAL FEED	DEGUSSA	JUL-02-154
AUCTIONEERS	CHRISTIE'S/SOTHEBY'S	MAY-02-106
		NOV-02-260
BANKING	AUSTRIAN BANKS	JUN-02-127
BARRISTERS	ARDUINO	MAR-02-75
BOOKS	BDB	APR-02-082
BREWING	BREWERS' CARTELS	JAN-02-012
CHEMICALS	AVENTIS/MERCK	DEC-02-286
CITRIC ACID	CITRIC ACID CARTEL	JAN-02-002
INDUSTRIAL GASES	DUTCH GAS CARTEL	AUG-02-177
ZINC PHOSPHATE	Z P CARTEL	JAN-02-004
PRICING POLICY		
BANKING	GERMAN BANK CARTEL	JAN-02-010
CARBONLESS PAPER	CP CARTEL	JAN-02-006
PLASTERBOARD	LAFARGE/BPB	DEC-02-283
SHIPPING	ATLANTIC CONTAINER	MAR-02-057
TELECOMMUNICATIONS	DEUTSCHE TELEKOM	JUN-02-130
PROCEDURE		
ALL INDUSTRIES	COUNCIL REGULATION	DEC-02-277
ELECTRICAL EQUIPMENT	SCHNEIDER	NOV-02-264
GENERAL	ROQUETTE	NOV-02-271
POLYVYNILCHLORIDE(PVC)	LVM	DEC-02-288
PROHIBITION		
ELECTRICAL EQUIPMENT	SCHNEIDER	NOV-02-264
PACKAGING	TETRA LAVAL	NOV-02-261
PROPORTIONALITY		
MOTOR VEHICLES	VAUXHALL	SEP-02-224
PUBLIC POLICY		
BARRISTERS	WOUTERS	MAR-02-060
QUOTAS		
CARBONLESS PAPER	CP CARTEL	JAN-02-006
CITRIC ACID	CITRIC ACID CARTEL	JAN-02-002
RELEVANT MARKET		
TOUR OPERATORS	AIRTOURS	JUN-02-138
RESTRICTIONS OF COMPETITION		
BARRISTERS	WOUTERS	MAR-02-060
RIGHTS OF DEFENCE		
POWER	ASEA BROWN BOVERI	APR-02-092
SELECTIVE DISTRIBUTION		
MOTOR VEHICLES	DRAFT REGULATION	FEB-02-042
STATE AIDS		
ALL INDUSTRIES	COMM FRAMEWORK	MAY-02-101
	GERMANY	MAY-02-101
	GIBRALTAR	MAY-02-101
		MAY-02-115
BANKING	AUSTRIAN BANKS	APR-02-081

	BERLIN BANK	APR-02-100
		JUL-02-164
	CREDIT MUTUEL	FEB-02-028
	GERMAN BANKS	MAR-01-051
		MAY-02-112
	ITALIAN BANKS	SEP-02-223
	STARDUST MARINE	JUL-92-165
BROADCASTING	BBC	JUN-02-129
BUSINESS CENTRES	BISCAYE	SEP-02-219
ENERGY	TUSCANY	OCT-02-231
GRAIN BRANDY	GERMAN G BRANDY	JUL-02-153
MOTOR VEHICLES	BMW	APR-02-091
		OCT-02-250
	FORD	MAR-02-051
	OPEL	APR-02-078
	VAUXHALL	SEP-02-224
NEWSPRINT	SHOTTON	OCT-02-231
POSTAL SERVICES	AN POST	MAR-02-051
	BRITISH POST OFFICE	SEP-02-221
	DEUTSCHE POST	JUL-02-164
	POSTE ITALIANA	MAR-02-051
SERVICE STATIONS	DUTCH S STATIONS	JUL-02-175
TEXTILES	NEU ERBA LAUTEX	MAR-02-051
TYRES	CONTINENTAL	SEP-02-214
STATEMENT OF OBJECTIONS		
ELECTRICAL EQUIPMENT	SCHNEIDER	NOV-02-264
STATEMENT OF REASONS		
POWER	ASEA BROWN BOVERI	APR-02-092
SUPPLY RESTRICTIONS		
NATURAL GAS	NORWEGIAN GAS	AUG-02-179
TECHNOLOGY TRANSFER		
ALL INDUSTRIES	COMMISSION REPORT	FEB-02-032
TRADE BETWEEN MEMBER STATES		
BARRISTERS	WOUTERS	MAR-02-060
BOOKS	BDB	APR-02-082
UNDERTAKING		
BARRISTERS	WOUTERS	MAR-02-060
INSURANCE	CISAL v INAIL	FEB-02-041
UNDERTAKINGS		
AIRPORTS	ADP	NOV-02-267
BANKING	ITALIAN BANKS	SEP-02-223
VERTICAL AGREEMENTS		
MOTOR VEHICLES	COMM REGULATION	OCT-02-232
WORLD TRADE ORGANISATION		
ALL INDUSTRIES	COMM STATEMENT	JUL-02-151

Industry

ACCOUNTANCY	ANDERSEN	JUL-02-162
AIRLINES	AIR FRANCE	JUL-02-158
	KLM	NOV-02-256
	LUFTHANSA	JUL-02-160

AIRPORTS	ADP	NOV-02-267
	HUNTSDOWN	APR-02-086
ANIMAL FEED	DEGUSSA	JUL-02-154
AUCTIONEERS	CHRISTIE'S/SOTHEBY'S	MAY-02-106
BANKING	AUSTRIAN BANKS	APR-02-081
		JUN-02-127
	BERLIN BANK	APR-02-100
		JUL-02-164
	CREDIT MUTUEL	FEB-02-028
	GERMAN BANK CARTEL	JAN-02-010
	GERMAN BANKS	MAR-01-051
		MAY-02-112
	ITALIAN BANKS	SEP-02-223
	STARDUST MARINE	JUL-92-165
BARRISTERS	ARDUINO v CARAS	MAR-02-75
	WOUTERS	MAR-02-060
BOOKS	BDB	APR-02-082
BREWING	BI/KARLSBERG	SEP-02-206
	BREWERS' CARTELS	JAN-02-012
	CARLSBERG/HEINEKEN	SEP-02-206
		NOV-02-255
BROADCASTING	BBC	JUN-02-129
	IFPI	NOV-02-258
	SATELLIMAGES	APR-02-087
	UEFA	JUN-02-133
BUILDING MATERIALS	HANIEL	MAY-02-105
BUSINESS CENTRES	BISCAYE	SEP-02-219
CARBONLESS PAPER	CP CARTEL	JAN-02-006
CARS	COMMISSION REPORT	MAR-02-052
CHEMICALS	DEUTSCHE BP	JUL-02-157
	AVENTIS/MERCK	DEC-02-286
CITRIC ACID	CITRIC ACID CARTEL	JAN-02-002
COAL AND STEEL	COMMISSION STATEMENT	JUL-02-151
COMMUNICATIONS	COMMISSION GUIDELINES	AUG-02-186
COMPUTERS	HP/COMPAQ	FEB-02-027
	IBM/HITACHI	SEP-02-207
CONTAINERS	TETRA LAVAL/SIDEL	FEB-02-026
CROP CONTROL	BAYER/AVENTIS	MAY-02-102
CRUISE LINES	CARNIVAL	MAY-02-110
		AUG-02-181
ELECTRICAL EQUIPMENT	SCHNEIDER	FEB-02-026
		NOV-02-251
		NOV-02-264
ELECTRICITY	LEG/SEEBOARD	SEP-02-218
ENERGY	GVS	SEP-02-205
	TUSCANY	OCT-02-231
EXPRESS MAIL	DEUTSCHE POST/DHL	NOV-02-259
GRAIN BRANDY	GERMAN GRAIN BRANDY	JUL-02-153
INDUSTRIAL GASES	BOC/AIR LIQUIDE	NOV-02-266
	DUTCH GAS CARTEL	AUG-02-177
INSURANCE	CISAL v INAIL	FEB-02-041
	COMMISSION DRAFT	AUG-02-182
INTERNET ACCESS	WANADOO	JAN-02-009
LOUDSPEAKERS	B & W	JUL-02-156

MOBILE PHONES	KPN	APR-02-079
	T-MOBILE/MM02	SEP-02-210
MOTOR VEHICLES	BMW	APR-02-091
		OCT-02-250
	COMMISSION REGULATION	AUG-02-191
		OCT-02-232
	COMMISSION REPORT	AUG-02-188
	DRAFT REGULATION	FEB-02-042
	FORD	MAR-02-051
	OPEL	APR-02-078
	VAUXHALL	SEP-02-224
NATURAL GAS	NORWEGIAN GAS	AUG-02-179
NEWSPRINT	SHOTTON	OCT-02-231
OIL	CARREFOUR	APR-02-76
	TOTAL/FINA/ELF	FEB-02-026
		APR-02-76
PACKAGING	TETRA LAVAL	NOV-02-251
PETFOODS	MASTERFOODS	MAR-02-055
PHARMACEUTICAL DATA	IMS	OCT-02-227
PLASTERBOARD	LAFARGE/BPB	DEC-02-283
POLYVYNILCHLORIDE(PVC)	LVM	DEC-02-288
POSTAL SERVICES	AN POST	MAR-02-051
	BELGIAN POST OFFICE	FEB-02-029
	BRITISH POST OFFICE	SEP-02-221
	DEUTSCHE POST	JUL-02-164
	POSTE ITALIANA	MAR-02-051
POWER	ASEA BROWN BOVERI	APR-02-092
	GE/ENRON	MAY-02-109
REAL ESTATE	MORGAN STANLEY	SEP-02-215
RETAILERS	KESKO/TUKO	FEB-02-026
SERVICE STATIONS	DUTCH SERVICE STATIONS	JUL-02-175
SHIPPING	ATLANTIC CONTAINER	MAR-02-057
	P&O STENA	SEP-02-212
SOFTWARE	CHECK POINT	APR-02-077
SPORT	COMMISSION MEMORANDUM	JUN-02-136
	IOC	SEP-02-208
STOCK EXCHANGES	COMMISSION STATEMENT	DEC-02-276
TELECOMMUNICATIONS	DEUTSCHE TELEKOM	JUN-02-130
TELEVISION	M6/GT/SIC	OCT-02-229
	VIA DIGITAL	SEP-02-216
TEXTILES	NEU ERBA LAUTEX	MAR-02-051
TOUR OPERATORS	AIRTOURS	JUN-02-138
		NOV-02-251
TOYS	BLOKKER/TOYS 'R US	FEB-02-026
TRANSPORT	CONNEX	MAY-02-108
TYRES	CONTINENTAL	SEP-02-214
VIDEO GAMES	NINTENDO	NOV-02-252
ZINC PHOSPHATE	ZINC PHOSPHATE CARTEL	JAN-02-004

Cases

AEROPORTS de PARIS	NOV-02-267

AIR FRANCE	JUL-02-158
AIRTOURS	JUN-02-138,NOV-02-251
AN POST	MAR-02-051
ANDERSEN	JUL-02-162
ARDUINO v CARAS	MAR-02-75
ASEA BROWN BOVERI	APR-02-092
ATLANTIC CONTAINER	MAR-02-057
AUSTRIAN BANKS	APR-02-081,JUN-02-127
AVENTIS/MERCK	DEC-02-286
B & W	JUL-02-156
BAYER/AVENTIS	MAY-02-102
BBC	JUN-02-129
BDB	APR-02-082
BELGIAN POST OFFICE	FEB-02-029
BERLIN BANK	APR-02-100,JUL-02-164
BI/KARLSBERG	SEP-02-206
BISCAYE	SEP-02-219
BLOKKER/TOYS 'R US	FEB-02-026
BMW	APR-02-091,OCT-02-250
BOC/AIR LIQUIDE	NOV-02-266
BREWERS' CARTELS	JAN-02-012
BRITISH POST OFFICE	SEP-02-221
CARLSBERG/HEINEKEN	SEP-02-206,NOV-02-255
CARNIVAL	MAY-02-110,AUG-02-181
CARREFOUR	APR-02-076
CHECK POINT	APR-02-077
CHRISTIE'S/SOTHEBY'S	MAY-02-106
CISAL v INAIL	FEB-02-041
CITRIC ACID CARTEL	JAN-02-002
CONNEX	MAY-02-108
CONTINENTAL	SEP-02-214
CARBONLESS PAPER CARTEL	JAN-02-006
CREDIT MUTUEL	FEB-02-028
DEGUSSA	JUL-02-154
DEUTSCHE BP/ERDÖLCHEMIE	JUL-02-157
DEUTSCHE POST	JUL-02-164
DEUTSCHE POST/DHL	NOV-02-259
DEUTSCHE TELEKOM	JUN-02-130
DUTCH GAS CARTEL	AUG-02-177
DUTCH SERVICE STATIONS	JUL-02-175
FORD	MAR-02-051
GE/ENRON	MAY-02-109
GERMAN BANK CARTEL	JAN-02-010
GERMAN BANKS	MAR-01-051,MAY-02-112
GERMAN GRAIN BRANDY	JUL-02-153
GVS	SEP-02-205
HANIEL	MAY-02-105
HP/COMPAQ	FEB-02-027
HUNTSDOWN	APR-02-086
IBM/HITACHI	SEP-02-207
IFPI	NOV-02-258
IMS	OCT-02-227
IOC	SEP-02-208
ITALIAN BANKS	SEP-02-223

KESKO/TUKO	FEB-02-026
KLM	NOV-02-256
KPN	APR-02-079
LAFARGE/BPB	DEC-02-283
LEG/SEEBOARD	SEP-02-218
LUFTHANSA	JUL-02-160
LVM	DEC-02-288
M6/GT/SIC	OCT-02-229
MASTERFOODS	MAR-02-055
MORGAN STANLEY	SEP-02-215
NEU ERBA LAUTEX	MAR-02-051
NINTENDO	NOV-02-252
NORWEGIAN GAS	AUG-02-179
OPEL	APR-02-078
P&O STENA	SEP-02-212
POSTE ITALIANA	MAR-02-051
SATELLIMAGES	APR-02-087
SCHNEIDER	FEB-02-026, NOV-02-251,NOV-02-264
SHOTTON	OCT-02-231
STARDUST MARINE	JUL-92-165
T-MOBILE/MM02	SEP-02-210
TETRA LAVAL/SIDEL	FEB-02-026,NOV-02-251
TOTAL/FINA/ELF	FEB-02-026,APR-02-76
TUSCANY	OCT-02-231
UEFA	JUN-02-133
VAUXHALL	SEP-02-224
VIA DIGITAL	SEP-02-216
WANADOO	JAN-02-009
WOUTERS	MAR-02-060
ZINC PHOSPHATE CARTEL	JAN-02-004

The Leroy Merlin / Brico Case

The Commission has decided to refer the examination of the impact of Leroy Merlin's acquisition of Brico DIY stores on their markets to the competition authorities in France, Spain and Portugal. The Commission found that the deal did not raise competition concerns in the rest of the European Union and that the three national authorities concerned were best placed to assess its impact on the distribution of DIY items in their countries. It is the first time that the Commission has referred a merger case, at their request, to more than two Member States; it has done so because of the purely local nature of the problems posed. This is in no way contrary to the proposal adopted this week to amend the Merger Regulation, in which it is proposed to make the referral procedure to and from the Commission more flexible.

Source: Commission Statement IP/02/1881, dated 13 December 2002