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Those numbers again

In our May 1999 issue, we set out a table of Articles of the EC Treaty concerned with the rules on competition, showing the changes in numbering which had resulted from the Treaty of Amsterdam. The Commission and the Court of Justice are dealing with the renumbering in different ways. The Commission is simply converting the old numbers into the new numbers even where cases originated under the old Article. For example, in the case reported on page 182 of this issue, the Commission refers to an application for exemption made in 1996 under Article 81(3). At the time it was Article 85(3). But the Commission's method has the merit of simplicity. The Court's approach is complex and involves a distinction between references to "Article 85 of the EC Treaty", which notes the position before 1 May 1999, and "Article 81 EC", which denotes the position on and after that date. Distinctions are also made between intact and amended Articles and between Articles replaced individually and Articles replaced *en bloc*. Readers of the Courts' judgments therefore need to be wary of the respective distinctions in numbering.

Incomplete information

There has to be a first time for everything; and now a merger authorisation granted by the Commission has, for the first time, been vitiated by the discovery that the authorisation was granted on the basis of incomplete information provided by the parties concerned. For those who wonder what happens in these circumstances, the answer is simple. The Commission revokes the authorisation, fines the parties and, if the parties are lucky, renews the authorisation, subject to appropriate conditions. In the Sanofi/Synthelabo case, the two companies failed to indicate that they were both involved in the same active substance area. After the Commission had approved the merger it received five complaints about the monopoly thus created on the market for morphine and morphine derivatives and had to revoke its authorisation. The Commission imposed a fine of €50,000 on each company (the maximum under Article 14 of the Merger Regulation). Once the two companies had completed the information required in their notification, including a disclosure that subsidiaries of the two companies were already producing morphine derivatives and had a monopoly for the sale of one of them named pholcodine, the Commission adopted a second decision approving the merger subject to a condition that the pholcodine operation should be sold to an independent third party. (Source: Commission Statement IP/99/591, dated 28 July 1999.) □