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Unfinished business

This year ends with a great deal of unfinished business, especially in the field of mergers, acquisitions and joint ventures. At the time of writing, the future of some of the operations of United Biscuits is uncertain. The Commission has cleared the acquisition by Heinz Company (USA) of the frozen and chilled food business of United Biscuits; but French interests have now come into the picture. (The Commission is sometimes called on to clear concentrations which do not, in the event, take place. The arrangements planned a year or two ago between American Airlines and British Airways are a case in point.) Another uncertainty hangs over the future course likely to be taken by British Aerospace: whether it will look across the Atlantic or whether it will decide to cement its relationship with the European aerospace industry. One other case, the outcome of which will be looked at throughout the world, even though the case itself is being conducted in the United States, concerns Microsoft. The US Court found that there was a monopoly and appointed a senior judge to discuss with Microsoft and the Department of Justice the basis on which the case might be settled. At present, the position is that the Court's factual determination stands and, in the absence of a satisfactory settlement, will lead to a further hearing in 2000 on the legal steps to be taken to follow up the factual findings.

State aids and national courts

State aids continue to be a factor in the distortion of competition in the European Union. The Commission hopes that national courts will play a bigger role in enforcing the state aid rules. (A study of the problem was completed earlier this year: "Application of EC State aid law by the Member States' courts", Office for Official Publications.) On the face of it, there are at least two reasons for a corporation to hesitate before taking a state aid case to a national court. The first is the lack of transparency in state aid schemes: corporations may not even know what advantages are enjoyed by their competitors. The second is that litigation may well be slower and far more expensive than the process of making a complaint to the Commission. While it is true that national courts may play a part in enforcing decisions made by the Commission, their role in the earlier stages of a state aid case may be limited by the fact that the very concept of aid requires interpretation. The Commission points out that national courts can ask it for advice; but not all national courts are keen to seek from an administrative body help in the determination of what is essentially a judicial function. ■