PROCEDURE (ALL INDUSTRIES): COMMISSION REGULATIONS

Subject: Procedure

Industry: All industries

Source: Commission Statement IP/98/1177, dated 23 December 1998

(Note. Any simplification of procedures is to be welcomed, though this does seem rather small beer. It is reported mainly for readers to note that old friends, like Regulation 99/63, are no longer with us.)

The Commission has adopted two Regulations which are intended to modernise, simplify and make more user-friendly its competition procedures. The first Regulation sets out how the Commission will ensure the right of the different parties involved in competition cases to be heard. The second Regulation sets out how to lodge applications and notifications in competition cases relating to the transport sector. This second Regulation covers all transport sectors (that is, inland transport, maritime transport and air transport). Both Regulations will come into force on I February 1999 and replace five existing Commission Regulations. (Commission Regulations (EEC) No 99/63, (EEC) No 1629/69, (EEC) No 1630/69, (EEC) No 4260/88 and (EEC) No 4261/88 will be repealed.)

Commission Regulation on the hearing of parties in competition proceedings

As part of the process of improving the procedures under which it examines competition cases, the Commission has now simplified and brought up-to-date Commission Regulation (EEC) No 99/63, which relates to hearings. The new Regulation takes account of developments in the ways in which the Commission protects the procedural rights of parties in competition cases, such as the role of the Hearing Officer and access to the file. A new rule provides that statements made at hearings will be recorded so that a tape recording will replace the written minutes. The new Regulation applies to all anti-trust cases including transport cases. it therefore replaces several existing regulations with a single Regulation.

Commission Regulation on applications and notifications in the transport sector

In 1994 the Commission modernised the rules for notifying restrictive agreements in sectors other than transport by adopting Regulation (EC) No 3395/94 and Form A/B. The new Regulation and the new Form TR introduce similar modem rules for companies which wish to notify restrictive agreements in the transport sector. They replace three separate Regulations and Forms (Council Regulations (EEC) No 1017/68, (EEC) No 4056/86 and (EEC) No 3975/87) which previously contained the rules for notifying agreements in the inland transport, maritime transport, and air transport sectors, respectively.

The new Regulation introduces to the transport sector rules which the Commission already adopted for other sectors in 1994, including the following:

- the language used for an application is the language of the proceeding for the party or parties making the application;
- form TR requires companies to provide more information than was previously the case, thus enabling the Commission to examine agreements without having to request further information. (However if some of the information requested on form TR is not necessary for a particular case, the Commisssion can waive the requirement to provide this information. This avoids unnecessary costs and regulatory burdens for companies.);
- the rules on the effective date of submission of an application are spelt out more fully, establishing clearly the principle that applications must be complete in order to be deemed valid.

Form TR is not a form to be complete: it merely specifies the information which must be provided by companies when notifying their agreements. In this respect it resembles Form A/B, which is used for notifying restrictive agreements in sectors other than transport, and Form CO, which is used for notifying mergers. □

PATENT LICENSING (VIDEO SIGNALS): THE CTV CASE

Subject: Patent licensing
Cooperation agreements
Standardisation
Comfort letters

Industry: Video signals

Parties: Cable Television Laboratories Inc
Fujitsu Limited
Matsushita Electric Industrial Co., Ltd.
Mitsubishi Electric Corporation
NextLevel Systems, Inc.(now called General Instrument, Inc.)
Philips Electronics N.V.
Scientiric-Atlanta, Inc.
Sony Corporation
The Trustees of Columbia University in the City of New York

Source: Commission Statement IP/98/1155, dated 18th December 1998

(Note. Patent pools of the kind involved in this case are not automatically exempted under the block exemption regulation for technology transfer licences: Article 5 excludes from the scope of the regulation horizontal agreements, whether for the purposes of research and development, standardisation or joint investment in new technology, or not. Consequently, these arrangements have to be individually notified. However,

given their general objectives, they are usually treated sympathetically by the Commission.)

The Commission has approved a programme concerning licences under patents essential to implementing an ISO standard for transmitting and storing video signals called MPEG-2 (Moving Pictures Expert Group). The programme provides for the creation of a patent portfolio licence that gives access to essential patents on MPEG-2 technology. This patent pool is considered to help promoting technical and economic progress and thus to be compatible with competition law.

MPEG-2 is a flexible and open standard which provides a technique for eliminating redundant information from a video signal to save transmission resources and storage space on storage media such as optical discs. Certain holders of essential patents have agreed to license their patents through a single non-exclusive and non-discriminatory license programme to be administered by MPEG-LA, of Denver, Colorado, USA. The MPEG-2 Licensing programme defines a Patent Portfolio License which gives access to the patents through a single licence which is available from MPEG-LA.

The Commission has found that this patent pool helps to promote technical and economic progress by allowing quick and efficient introduction of the MPEG-2 technology. It therefore considers that the pool has beneficial effects for the consumer and does not contain unnecessary or excessive restrictions on competition. An administrative ("comfort") letter has cleared the programme.

Further details of the MPEG-2 Licensing Programme were published as part of the original notification in the Official Journal of the European Communities on 22 July 1998 (OJ No 98/C 229/06 of 22.7.98) □

JOINT VENTURES (MOBILE PHONES): THE MOTOROLA / SYMBIAN CASE

Subject: Joint ventures

Industry: Mobile phones; telecommunications
(Some implications for many industries)

Parties: Motorola
Symbian
Ericsson
Nokia
Psion

Source: Commission Statement IP/98/1181, dated 23rd December 1998

(Note. Much of the interest in this case lies in the fact that the joint venture in question

was notified in accordance with the procedure provided under the Merger Regulation, but was found not to be a "concentration". It therefore has to be dealt with under the procedures for examining cases falling within the scope of Article 85 or Article 86, or both. Although many of the problems of differentiating "concentrative" and "cooperative" joint ventures have been reduced by the changes in the Merger Regulation rules last year, there are still cases which begin under the regulation and end up under the Treaty Articles.)

The Commission has decided that the proposed joint venture between US mobile phone manufacturer Motorola and Symbian company does not constitute a concentration within the meaning of the Merger Regulation. Symbian's other shareholders are the mobile phone manufacturers Ericsson and Nokia and the handheld computer and operating system manufacturer Psion. Symbian is developing Psion's EPOC operating system for use in wireless information devices (WIDS) which combine in one handset the features found in handheld computers with the communications possibilities of a mobile phone. The Symbian operating system will be competing with others currently being used and developed for use in WIDs and handheld computers, for example by Wireless Knowledge (Microsoft & Qualcomm), 3Com(r), GeoWorks, Sun Microsystems, and Sharp.

The creation of the initial joint venture (Symbian 1) was cleared by the Commission under the Merger Regulation in August, 1998. With Motorola's entry into Symbian, a structural change has been brought about within the company. While the original shareholders of Symbian I jointly controlled the company, under the new constellation there is no longer such joint control, so that the transaction does not constitute a concentration under the Merger Regulation.

At the request of the parties, the transaction will now be dealt with pursuant to the provisions of Regulation 17 (the implementing regulation for the application of Articles 85 and 86 of the EC Treaty). In dealing with this case under Articles 85 and 86, the Commission will take into account the criteria underlying its positive decision regarding Symbian 1, in particular the dynamic nature of the emerging market for operating systems to be used in WIDS, the presence of several competitors on that market, and the commitment by Symbian to licence the operating system it develops to non-shareholders producing WIDs on an open and non-discriminatory basis. □

Readers interested in taking part free of charge in a Conference on the Internet on "The Impact of Competition Rules on Intellectual Property Rights", are invited to look at the following web-site: www.ipconference.com

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