four months from the date of that decision in which to make a final decision. It will carry out its investigation in close liaison with the Federal Cartel Office. ■

ACQUISITIONS (RETAIL CHAINS): THE KESKO CASE

Subject: Acquisitions
Trade between Member States
Admissibility

Industry: Retail chains
(Some implications for other industries)

Parties: Kesko Oy
Commission of the European Communities
Republic of Finland (intervener)
French Republic (intervener)

Source: Judgment of The Court of First Instance, dated 15 December 1999 in Case T-22/97, *Kesko Oy v Commission of the European Communities*, supported by the Republic of Finland and the French Republic

(Note. This case has a number of points of interest. Perhaps the most important is the problem of assessing how far a concentration, which is limited to industries within a Member State's national boundaries, can be said to affect trade between Member States. Up to a point, the answer may be largely theoretical. Thus, in the present case, the Court mainly based its findings on the propositions "that the concentration will result in foreign undertakings being denied entry to the Finnish daily consumer goods market, that a significant proportion of the products sold by Kesko and Tuko originates outside Finland, and that suppliers from other Member States will be obliged to approach Kesko in order to secure adequate distribution of their products in Finland". But this is a good rationale and it is given authority by the application to it of the case law cited in paragraphs 103 to 105 and in paragraph 108. The judgment is therefore a useful point of reference for any future cases in which at first sight the effects of the concentration do not obviously affect trade between the Member States.

An important aspect of the foregoing point is that it represents a kind of cumulative test to be applied by the Commission in the examination of a proposed concentration. The applicant to the Court had argued that there was a contradiction between the Commission's principal finding that the concentration would create or strengthen a dominant position on the Finnish market and the finding that the concentration would affect trade between Member States. The Court disagreed. "These are, in fact, two separate matters. In order to determine the effect on intra-Community trade, the Commission was necessarily required to assess it in the light of patterns of trade between Member States. By contrast, the question whether a given concentration creates or strengthens a dominant position, as a result of which effective competition would be significantly impeded within the territory of the Member State concerned, within the meaning of Article 22(3) of Regulation 4064/89, is concerned, by its very nature, with the effects of the concentration on the national market." (Paragraph 115.)