PROCEDURE: DRAFT COUNCIL REGULATION

Subject: Procedure

Industry: All industries, except agriculture, transport and coal and steel

Source: Commission Statement IP/00/1064, dated 27 September 2000

(Note. It looks as though we shall soon be bidding farewell to Regulation 17 of 1962 and to the system of notification of infringements of the rules on competition. A new Council Regulation is being proposed by the Commission to replace it. The text has just been published and will be the subject of comment in forthcoming issues of the newsletter. In the meantime, the following statement by the Commission gives a broad idea of the proposal, once of whose principal objectives is a sharing of responsibility for enforcing the rules competition between the Commission and the Member States' authorities and courts. Sharing responsibility for enforcement does not mean that the Commission will give up its central authority in competition matters: the Commission has no intention of "re-nationalising" competition jurisdiction.)

The Commission has adopted a proposal for a Regulation implementing Articles 81 and 82 of the Treaty, which set out the Community competition rules applicable to restrictive practices between businesses and abuses of dominant positions committed by them. The proposal is intended to replace the current system - in force since 1962 - of administrative authorisation centralised at Commission level by one in which both the Commission and the national authorities and courts will be able to apply Article 81 in full. "This is the most important legislative initiative in the competition field since the 1990 Merger Regulation," said Mr Monti, the Commissioner responsible for Competition Policy.

Substance of the proposal

The proposal amends extensively the arrangements for implementing Articles 81 and 82 of the Treaty. It does not concern state aid or merger control. The new text will replace Regulation 17 of 1962, which is one of the cornerstones of Community competition law but which, after close on forty years of existence, needs to be adapted to a different economic and institutional environment. The proposal will need to be adopted by the Council, after the European Parliament has been consulted.

In April 1999 the Commission adopted a White Paper mapping out the broad lines of the proposed reform. The proposal adopted today takes account of the contributions from the European Parliament and the Economic and Social Committee and of the numerous observations received from the national authorities and industry. The Commission is proposing a system in which, as they are already able to do in the case of Article 82, the national competition

authorities and courts will be able to apply Article 81 in its entirety. The competition authorities and the Commission will form a network and work together to punish infringements of the Community competition rules. For their part, national courts will protect the rights that individuals enjoy under Community law by awarding damages or ruling on the enforcement of contracts.

Better protection of competition in consumers' interests

The proposal is intended to strengthen competition in the Community. To that end, it will extend to national competition authorities and courts the power to apply Community law in full. In the run-up to enlargement a decision is needed since a single institution - the Commission - cannot on its own ensure that Community rules are complied with. The current system involves the notification of agreements to the Commission, which alone is empowered to authorise those that restrict competition. Experience has shown that this notification system does not serve to safeguard competition. Its abolition will enable the Commission to target the most serious restrictions and abuses. Lastly, the intention is to strengthen the means that the Commission has at its disposal to detect and punish cartels and other infringements of the rules. The proposal will therefore improve the protection afforded to competition and ensure that consumers are able to benefit fully from the single market.

Decentralisation without renationalisation

Increased involvement of the national competition authorities and courts is at the heart of the proposal. It is important that the decision-making bodies should be brought closer to the individual so as to disseminate more widely a common competition culture and to foster the acceptance of Community rules. However, as the European Parliament has stated on many occasions, greater decentralisation must in no circumstances lead to any renationalisation of competition policy, which is an important pillar of the Community edifice. All economic agents must be treated on a non-discriminatory basis throughout the Community. It is for this reason that the proposal retains an autonomous decision-making power for the Commission and sets up information and cooperation mechanisms that will guarantee consistent application of the rules within the Community.

A more level playing field and less red tape for businesses

One of the key aspects of the proposal is the application by all decision-making authorities of a single rule of law whenever trade between Member States is affected. In future, businesses will no longer have to contend with sixteen distinct legal systems; they will be faced with a single Community instrument whenever their activities affect trade between Member States. This will guarantee them a level playing field throughout the Community and will reduce compliance costs significantly. In addition, abolition of the notification system will ease the administrative constraints imposed on them by the current system. ■