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Reform of the Merger Regulation

Since the adoption of the Commission's Green Paper on the reform of the Merger Regulation, the Commission has received a wide range of views from interested parties, and in particular from the business community, the legal profession, consumers and trade unions. That is in addition to the continuing dialogue with governments and competition authorities of Member States and of some non-member states, as well as with other European Community institutions.

The official period for public comment expired at the end of March 2002, by which time the Commission had received 114 written comments. Nearly half the submissions were from industry and more than a quarter from law firms. A large proportion of these contributions come from the English-speaking world, in particular from the United Kingdom and, to a lesser extent, from United States firms and associations.

Four broad subjects were raised in the submissions:

- the question of jurisdiction,
- the extent to which infringements "substantially" affected competition,
- how far "efficiency" arguments should be acceptable and
- matters of procedure and enforcement.

As to the question of jurisdiction, the evidence shows that a significant number of transactions scrutinised at national level are the subject of notification in several Member States. The Green Paper proposed methods of tackling the problem of multi-jurisdictional filings and of making the mechanism for case allocation between the Commission and Member States more effective: it suggested automatic Community jurisdiction over transactions notifiable in three or more Member States (the "3+ model"). This suggestion seems to have been welcomed.

Among other things, the Green Paper invited comments on the dominance test enshrined in Article 2 of the Merger Regulation, and in particular on how the effectiveness of this test compared with that used in many other jurisdictions (and notably in the United States), that mergers should not be allowed to proceed if they engendered a "substantial lessening of competition". Arguments for and against the different approaches appear to be fairly evenly balanced.

"Efficiency" arguments were discussed in our December 2001 issue: they continue to figure in the submissions. But procedure and enforcement are attracting more attention. There are criticisms of the "time squeeze" which gives companies insufficient time to have their remedy proposals properly considered; and there is support for the extension of accelerated appeal in the Courts. The Commission is sympathetic to reform in both these areas. ■