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Comment

Commission Setbacks in Merger Cases

When opening a speech in Brussels on November 7th, the Commissioner for Competition Policy, Mario Monti, prefaced his review of merger control by a reference to some of the setbacks which the Commission had recently experienced in the Courts. He was speaking about the plans he intended to submit to the Council "before the end of this year" for a far-reaching reform of European merger control. However, before describing the proposed reforms, he turned briefly to matters which had been drawing a lot of his attention in recent weeks, and no doubt had caught many other people's eyes too.

He noted that the Commission had faced unprecedented criticism in the wake of three judgments of the Court of First Instance over-turning on appeal the prohibition decisions the Commission had taken in *Airtours/First Choice*, *Schneider/Legrand* and *Tetra Laval/Sidel*. Two of those judgments had been delivered only a fortnight ago: and the Commission was still studying them carefully before deciding whether or not to lodge an appeal to the European Court of Justice in either or both cases. In the meantime, the Commission might well decide, with more hindsight, that these judgments, no matter how painful, came at the right moment. Indeed, there were no doubt lessons to be drawn from the judgments: in particular, it was clear that the Court of First Instance was now holding the Commission to a very high standard of proof, and that this had clear implications for the way in which investigations were conducted and decisions drafted. The Commission has taken into account the shortcomings in its procedures, highlighted in the judgments, by strengthening its reforms even further.

While the judgments were sharply critical of the Commission in some respects, they also confirmed some of the Commission's views. In *Schneider/Legrand*, the Commission's decision was overturned by the Court on account of a procedural error by the Commission. The Court did, however, confirm that the operation would have engendered serious competition problems in France. And in *Tetra Laval/Sidel*, the Court upheld the principle that conglomerate mergers could, in certain circumstances, fall under the Merger Regulation. The Commission bravely comments that these setbacks should not distort the Community's merger control policy, but should provide an opportunity for even deeper reform. ■

Editor's Note. The Airtours case was reported in our June 2002 issue, on page 138. At the time of writing, the Schneider case is available only in French; and we have therefore reproduced in the present issue the Court's press statement on the case; if appropriate, a future issue will contain extracts from the judgment. As for the Tetra Laval case, this is available in English but is so long that in this issue we are publishing only the Court's press statement on the case and looking at the possibility of editing the judgment in a suitable form in a future issue.