COMPETITION (COAL AND STEEL): COMMISSION STATEMENT

Subject: Rules on competition

Industry: Coal and Steel

Source: Commission Statement IP/02/925, dated 25 June 2002; Commission Communication, published in the Official Journal of the European Communities (C 154 of 28 June 2002)

(Note. After fifty years, the original Treaty setting up a common market among the six Member States of the day in the coal and steel sectors comes to an end; and the present report indicates how the special provisions of the Treaty relating to competition in those sectors are to be subsumed in the rules on competition under the EC Treaty. The transitional provisions are important, particularly in relation to existing exemptions and current procedures. The text of the Communication may be seen on the Internet at the website given at the end of this report.)

After the expiry, on 23 July 2002, of the European Coal and Steel Community (ECSC) Treaty, these two sectors will be subject to the normal rules applicable to the rest of the economy except the nuclear field, which is still governed by the Euratom Treaty. In a Communication, the Commission outlines how the competition rules will apply to pending steel and coal cases during the changeover to the European Community (EC) Treaty rules, thereby providing economic operators and Member States with legal certainty. The Commission has along the years aligned the application of the ECSC and the EC Treaties. This means that the changeover to the EC Treaty is unlikely to cause major problems.

Nevertheless, the Commission thought it useful to provide guidance for companies in the area of antitrust and merger control rules, as well for Member States in respect to State aid rules. The Communication summarises the most important changes with regard to the applicable substantive and procedural law arising from the transition to the EC regime, and it explains how the Commission intends to deal with specific issues raised by this transition in the areas of antitrust, merger control and State aid control. It concentrates on cases which, from a factual or legal point of view started before the expiry of the ECSC Treaty and which in some way or another continue after the expiry.

With regard to procedural law, the basic principle for all three areas (antitrust, merger control and State aid control) is that the rules applicable are those in force at the time of taking the procedural step in question. This means that, as from July 24, the Commission will exclusively apply the EC procedural rules in all pending and new cases. The Commission also informs coal and steel companies of its intention not to initiate antitrust procedures under the EC Treaty against agreements formerly exempted under the ECSC regime, subject however to any

new elements of fact or law appearing afterwards and putting into question whether these agreements should be exempted.

This follows a concern that restrictive agreements, which are exempted under the ECSC Treaty and lose this exemption because of the Treaty's expiry, would all have to be notified again for formal clearance. This would not be appropriate, given the fact that the exemption provisions under the ECSC and the EC Treaties are largely similar, and that the Commission intends to concentrate on prohibition procedures in its antitrust practice. In so doing, the Commission hopes not only to ensure legal certainty for firms that their agreements continue to benefit from antitrust clearance but also to avoid the legal costs and bureaucracy inherent in a notification system.

Coal and steel concentrations will be subject to the normal rules set in the Merger Regulation. This means that, while under the ECSC Treaty the Commission had jurisdiction over all mergers, acquisitions and over most joint ventures in the two sectors regardless of their size, in the future it will examine only those concentrations which meet the turnover thresholds set in the Regulation. With respect to joint ventures, the Commission informs companies that any such deals pending at the time of the expiry of the ECSC Treaty may be converted into notifications of cooperative agreements under the EC antitrust rules particularly if the notifying parties request such conversion. The Merger Regulation applies only to full function joint ventures, that is, joint ventures which create stand-alone and long-lasting business entities with adequate staff and financial ressources.

Where State aids are concerned, the ban on regional investment aid and rescue and restructuring aid to the steel sector will continue after the expiry of the ECSC Treaty. As for the applicable procedures, aid granted to the steel industry under schemes authorised by the Commission will no longer be subject to the prior notification requirement established in the current Steel Aid Code. Coal aid, both in terms of substantive rules and procedures, will be governed by a new Regulation to apply from 24 July 2002 which is in the process of being formally adopted after the agreement reached in the last Energy Council.

The Commission's Communication can be consulted on the internet at the following address: http://europa.eu.int/comm/competition/index_en.html ■

The German Grain Brandy Monopoly

The Commission has adopted a recommendation calling on Germany to take appropriate measures to reform the spirits monopoly law in respect of grain brandy. As they stand, the arrangements constitute aid to German producers, which is not available to producers from other Member States.

Source: Commission Statement IP/02/887, dated 19 June 2002