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COMPETITION LAW IN THE EUROPEAN COMMUNITIES

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The Treaty of Nice

On 1 February 2003, the Treaty of Nice came into force. The Treaty negotiations were concluded in December 2000; and the Treaty was officially signed on 26 February 2001. Ireland was the last of the 15 Member States to ratify the Treaty: it did so after a referendum held on 20 October 2002 and deposited its instrument of ratification in December 2002. The Treaty stipulates that it comes into force on the first day of the second month following the deposit by the last Member State to ratify. The main purpose of the Treaty is to make such adaptations to the European institutions as are necessary for enlargement of the European Union. The Treaty will also facilitate decision-making in the Council of Ministers by changing the decision rule from unanimity to qualified majority in a number of policy fields. It foresees a major reform of the judicial system to tackle the case overload in the Court of Justice of the European Communities. Finally, it improves the procedure to detect and address a serious breach of fundamental rights by a Member State. It is unlikely to have any direct effect on the substance of competition policy but may affect legislation and judicial procedures in the competition field.

"Rescue Aids"

State aids designed to rescue ailing firms have to be assessed by the Commission according to special criteria, which are set out in the "Community Guidelines on aid for rescuing and restructuring firms in difficulty". According to these Guidelines, the Commission can approve rescue aid as long as it is a one-off support measure to keep a company in business for a limited period necessary to develop either a restructuring or a liquidation plan. In the current case involving the German aircraft manufacturer *Fairchild Dornier*, the Commission doubts whether the criteria are met. First of all, the Guidelines do not allow outright grants but only loans. Secondly, it is not clear whether the assistance is limited to a six month period. Thirdly, the Commission has not received a coherent liquidation plan and there are doubts that the aid is limited to the minimum necessary to keep the company afloat until such a plan can be developed. Fourthly, the Commission notes that Germany is in breach of its commitment to submit a restructuring or liquidation plan within six months after approval of the first rescue aid measure in June 2002. Finally, the Commission doubts that the aid measures could be approved as restructuring aid because there is neither a restructuring plan nor a financial partner that would ensure return to long-term profitability of the company. The outcome in the case is awaited. So, too, is the outcome in another "rescue" case, reported more fully in this issue, involving *France Telecom* (see page 39). *ABX Logistics* were luckier (see page 50); but there the Commission has concluded that "the aid is justified for acute social reasons because it is limited to the minimum amount needed to keep the three direct recipients afloat long enough to take a decision on their future". ■