June, 2003

Volume 26 Issue 6

COMPETITION LAW IN THE EUROPEAN COMMUNITIES

Copyright © 2003 Bryan Harris
ISSN 0141-769X

CONTENTS

126 COMMENT

Liberalisation and Competition
Constitutional Reform in the European Union

127 ABUSE OF DOMINANT POSITION (TELECOMS)

The DT Case

130 STATE AIDS (POSTAL SERVICES)

The British Post Office Case

132 ACQUISITIONS (POSTAL SERVICES)

The CSC / Royal Mail Case

134 ACQUISITIONS (VITAMINS)

The DSM / Roche Case

136 ECONOMIC ACTIVITY (SICKNESS FUNDS)

The AOK Case

139 STATE AIDS (LOGISTIC CENTRES)

The French Tax Case

141 STATE AIDS (ELECTRONICS)

The Seleco Case

MISCELLANEOUS

The SEB / Moulinex Case *133*
Copper Concentrates: Inspections *135*
The BMW Case *138*

FRANKLIN PIERCE
LAW CENTER LIBRARY
CONCORD, N.H.

Liberalisation

Liberalisation and competition policy go hand-in-hand. But, whereas the rules on competition are generally enforced on a case-by-case basis, the principles of liberalisation are generally enshrined in legislation; in this context, by means of European Community Regulations and Directives. An example of this is the energy sector, for which it is proposed that further measures should be taken for the full liberalisation of both gas and electricity markets: a so-called acceleration directive and a regulation on cross-border trade of electricity. In February this year a common position was adopted by the Council on these proposals and the texts are currently subject to a second reading in the Parliament. The new legislation will eliminate the distortions of competition resulting from the different speeds at which the Member States have been opening up their markets and improve competition conditions for effective liberalisation. Meanwhile, as reported in our last issue, the Commission's antitrust investigation involving the dominant Danish gas supplier DONG and a consortium formed by the country's main gas producers Shell, A.P. Møller and Chevron Texacon was closed after the members of the consortium undertook to market their production individually. This case is the latest of a series of cases in the energy sector, which have focused on removing restrictions that limit supply competition or access to networks and, therefore, have reinforced the progressive liberalisation of the sector.

Liberalisation of the telecommunications industry is a further case in point. Today, we see already part of the results: over the past five years (1998-2002) prices of long-distance and international phone calls have fallen by over 45%. However, local phone call prices fell only marginally over the same period. This difference in price trends reflects the fact that today the local loop is still controlled by the incumbent operators, which also run nearly 70% of all broadband connection. Tackling these types of problem, remaining five years after the liberalisation of the telecommunication sector, is one of the main aims of the new regulatory framework for electronic communications adopted last year. Under the new framework, regulation remains still for such areas where competition can most likely not be safeguarded by the mere application of competition rules: for example, to guarantee effective and speedy access to facilities which are crucial for the development of competition.

Constitutional Reform in the European Union

One of the (many) criticisms of the proposed constitution for the European Union is the suggestion that the Union should be treated as a legal entity. Until the Union does become an entity, the European Community remains the authority responsible for the rules on competition; and the rules themselves are laid down in the Treaty establishing the European Community. References in official press releases to the "European Union rules" or even, in some cases, to the competition articles of the Treaty on European Union, are legally incorrect. ■