PROCEDURE (ALL INDUSTRIES): COMMISSION STATEMENT

Subject: Procedure

Industry: All industries

Source: Commission Statement IP/03/603, 30 April 2003

(Note. It is useful for practitioners and others to have some knowledge of the internal procedures of the Commission in its anti-trust role; and the statement by the Commission of its intentions in the forthcoming year – dominated by the likely consequences of enlargement of the European Union – is a helpful guide.)

The Commission has decided on the first major re-organisation of its Directorate General for Competition for 13 years. Prompted by the modernisation of the European Communities' anti-trust rules, and reforms in merger and state aid control, the re-organisation of the DG is designed to increase the efficiency of the Commission's competition law enforcement in due time for Enlargement on 1st May 2004. Responsibility for the handling of merger and anti-trust cases will progressively be integrated into sectoral Directorates. A new enforcement unit is created to enforce the Commission's state aids decisions and ensure recovery of illegal subsidies. The re-organisation is designed to pave the way for the Commission to enforce competition law in a Union of 25 Member States and to raise the standards of its enforcement activity across the board. It will spread the best practice developed by the Merger Task Force throughout the Department, while making better use of the specific sectoral expertise of the anti-trust units; and it will establish a sound basis for co-operation between the Commission and national competition authorities.

The new organisation of DG Competition is based on a sector-specific organisation of merger control. Merger control units will be integrated into four sector-specific anti-trust Directorates. A smaller Merger Task Force will remain to ensure effective co-ordination of merger control across the DG. The sector-specific responsibilities of anti-trust and state aid units have also been revised with a view to balancing their workload. Finally, a new unit has been created devoted to the enforcement of the Commission's state aids decisions. By May 2004, provided the greater sectoral emphasis provides overall benefits, the transition will be completed. Mergers will then be dealt with in five sectoral anti-trust and merger directorates.

The re-organisation aims at enhancing sectoral knowledge of markets in view of the critical importance of dialogue with Member States' competition authorities and industry on important sectoral developments. It is also designed to ensure effective use of the Department's scarce staff resources and increased flexibility in their allocation between merger and anti-trust work. In parallel, the reorganization aims to strengthen internal decision-making procedures. The creation of a team headed by a new Chief Competition Economist, reporting

directly to the Director General, aims to strengthen in-house economic expertise. New panel procedures also introduce systematic internal scrutiny of decisions on major competition cases by a team whose main role will be to look at each of these cases from a fresh point of view.

Challenges ahead

DG Competition is faced with three major challenges in the years ahead :

- The coming into force on 1st May 2004 of the new procedural rules for the enforcement of the anti-trust rules set out in Articles 81 and 82 of the Treaty;
- The on-going negotiation in Council of a recast Merger Regulation which, the Commission hopes, will also come into force on 1st May 2004;
- Preparing a comprehensive reform package in the state aid field during 2004 designed to streamline procedures and to allow the Commission to focus on those state aids which are most likely to distort competition.

The forthcoming Enlargement will have significant consequences for DG Competition. Based on an analysis carried out in 2001, the estimated increase in workload will be between 30 and 40%.

The most recent judgments of the Court of First Instance, particularly in the fields of merger and State aid control, have also drawn attention to the issue of the burden of proof incumbent on the Commission in adopting negative decisions. This has led the Commission to review and strengthen internal procedures to ensure the rigour and objectivity of the legal and economic analysis at the basis of its decisions as well as to guarantee respect for due process.

The Merger Task Force

Created in 1990 when the European Merger Control Regulation came into force, the Merger Task Force has examined more than 2000 notified mergers to deadlines which are amongst the strictest deadlines in the world. More than 95% of mergers have been cleared within one month, in the so-called first phase examination. Only 18 mergers have been prohibited since 1990, representing less than 1% of the total notified concentrations.

The size of the Merger Task Force has grown steadily since its inception, although far from matching the increase in annual merger notifications, for example the more than doubling between 1995 and 2002. Today, nearly 60 graduate case-handlers are employed in a total staff of 96. Today's sectoral anti-trust directorates (Directorates C-F) account for a total of some 230 staff members, of whom roughly 160 are graduate case-handlers. Some 135 members of staff currently work on state aids within DG Competition; roughly 85 are graduate case-handlers. In total, DG Competition employs slightly more than 600 members of staff. In this first phase of the re-organisation of merger and anti-trust work, roughly a quarter of the present Merger Task Force staff will be re-deployed to merger units within the sectoral anti-trust directorates. ■