EUROPEAN COMMISSION

(1999)

Executive Summary

1. As in previous years there was intense activity in all areas within the Commission's sphere of competence. In 1999, the total number of new cases was 1 201, comprising 388 antitrust cases (under Articles 81, 82, and 86), 301 merger cases and 512 state aid cases. While the total number of new cases remains stable compared with 1998 (1 201 as against 1 198), increases in the number of merger cases (301 against 245) and state aid cases (512 against 444) were offset by a reduction in the number of antitrust cases (388 against 509). The total number of cases closed was 1 273, comprising 582 antitrust cases, 279 merger cases, and 412 state aid cases. There was an increase in the number of formal decisions which are particularly resource-intensive (20 phase II merger proceedings, as opposed to twelve in 1998 and eleven in 1997; 68 antitrust decisions, as opposed to 42 in 1998 and 27 in 1997; and 66 state aid decisions following the initiation of a formal investigation procedure, as opposed to 61 in 1998 and 32 in 1997). This demonstrates that the work output in 1999 was at an even higher level than that of the previous year.

2. On 22 December the Commission adopted Regulation No 2790/1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices. The new block exemption will effect a shift from the traditional policy, which relied largely on formalistic assessment criteria, towards an approach which focuses more on the economic effects of vertical agreements. The basic aim of this new approach is to simplify the rules applicable to vertical restraints and to reduce the regulatory burden for companies, while ensuring a more effective control of agreements entered into by companies holding significant market power.

3. On 28 April the Commission adopted a White Paper on modernisation of the rules implementing Articles 81 and 82 of the Treaty. This document launched a wide-ranging debate on the reform of Regulation 17, the cornerstone of the system for implementing Articles 81 and 82, drawn up at the beginning of the 1960s and applied up to now without significant modifications. The White Paper favours the adoption of a directly applicable exception system. This option consists in abolishing the authorisation arrangements and the notification system which is their corollary. Under a directly applicable exception system, Article 81(3), like Articles 81(1) and 82, could be applied not only by the Commission but also by any national authority or court. Article 81 would become, like Article 82, a unitary prohibition. Anticompetitive practices which affected trade between Member States, i.e. those caught by Article 81(1), would be lawful *ab initio* if they met the conditions laid down in Article 81(3). No procedure for authorisation by an administrative authority, and hence no notification, would then be necessary. The Commission takes the view that adopting a directly applicable exception system would enable it to safeguard competition more effectively and to simplify administrative supervision, thus meeting the requirements of Article 83 of the Treaty.

EUROPEAN COMMISSION

I. Changes to competition laws and policies

1. Summary of new legal provisions

a) Rules in the field of vertical restraints

4. On 22 December the Commission adopted Regulation No 2790/1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices[1]. This Regulation replaces three existing regulations, one on exclusive distribution, one on exclusive purchasing and one on franchise agreements[2], whose period of validity expired on 31 December. The new block exemption Regulation No 2790/1999 will effect a shift from the traditional policy, which relied largely on formalistic assessment criteria, towards an approach which focuses more on the economic effects of vertical agreements. The basic aim of this new approach is to simplify the rules applicable to vertical restraints and to reduce the regulatory burden for companies, while ensuring a more effective control of agreements entered into by companies holding significant market power.

5. The new policy is based on a single Commission regulation, with a wide scope, which block-exempts, up to a market-share threshold of 30 percent and subject to a limited number of "hardcore" restrictions and conditions, all agreements or concerted practices between two or more undertakings, each of which operates at a different level of the production or distribution chain, where such agreements or practices relate to the conditions under which the parties may purchase, sell or resell certain goods or services. This includes agreements concluded by retailers' associations, on condition that none of the members has a turnover of more than EUR 50 million, and certain non-reciprocal vertical agreements concluded between competing undertakings. A single market share threshold of 30 percent limits the scope of the block exemption. The Regulation contains specific provisions intended to ensure flexible application of the market share threshold in cases where it is temporarily exceeded. This increases legal certainty for the undertakings concerned. Above the 30 percent threshold, agreements are not presumed to be illegal but require individual examination. In order to assist undertakings in carrying out such an examination, the Commission will adopt a set of guidelines. A draft of these guidelines was published on 24 September for public consultation[3].

b) Directive under Article 86(3) on the legal separation of cable and telecommunications activities

6. On 23 June the Commission adopted a directive amending for the sixth time Directive 90/388/EEC[4] of 28 June 1990 on competition in telecommunications services. Pursuant to this amendment, Member States must ensure that telecommunications operators which are in dominant positions and which are controlled by a Member State or granted special rights pursue their cable television activities in a structurally separate company. This is in the light of the conflict of interests that exists between the operation of the two networks. An operator active on both networks is much less inclined to carry out rapid upgrading of the cable network and to use it to compete with its own telephone network, which also allows broadband transmission thanks to new technologies available today such as xDSL.

c) Partial prolongation of Block Exemption Regulation No 1617/93

7. On 26 May the Commission adopted Regulation (EC) No 1083/99[5] partly prolonging Regulation (EEC) No 1617/93[6], by which the Commission granted a block exemption for certain categories of restrictive agreements in four areas, i.e. joint planning and co-ordination of airline schedules, joint operation of a scheduled air service on a new or a low-density route, consultations on tariffs for the

carriage of passengers, and slot allocation and airport scheduling. While Regulation (EEC) No 1617/93 has been prolonged for passenger tariff consultations and slot allocation at airports until 30 June 2001, it has not been renewed for joint planning and co-ordination of airline schedules and joint operations. The Regulation entered into force on the date of its publication in the *Official Journal*.

2. Other relevant measures including guidelines

8. As regards procedures, two changes should be noted. First, the practice of consulting the Advisory Committee in cases where the Commission envisaged sending a comfort letter to the companies concerned following the publication of a notice under Article 19(3) of Regulation No 17 has been abandoned in cases where the notice does not give rise to any comments which might change the positive stance taken in it. It is only when key developments which might modify the initial stance follow the publication of the notice that the Commission enters the case on the agenda of a Committee meeting prior to sending the comfort letter. The second procedural change is intended to align practice in the antitrust field and the mergers and acquisitions field. So that the same letter does not have to be sent twice, once to the firm and once to its lawyer, firms may nominate a lawyer to receive their correspondence from the Commission. Such correspondence would be formally addressed to the firm involved in the proceedings, but would be sent to its lawyer (using the "care of" formula), who would be required to forward it to the firm.

3. Proposals for new legislation

a) White Paper on modernisation of the rules implementing Articles 81 and 82 of the EC Treaty

9. On 28 April the Commission adopted a White Paper on modernisation of the rules implementing Articles 81 and 82 of the Treaty[7]. This document is the starting point for a wide-ranging debate on the reform of Regulation 17, the cornerstone of the system for implementing Articles 81 and 82, drawn up at the beginning of the 1960s. Despite successive enlargements of the Community and the establishment of credible competition authorities in all the Member States, the system set in place at the beginning of the 1960s has not undergone any substantial changes to date. The Regulation 17 system today has two main shortcomings: it no longer ensures effective surveillance and it constitutes an excessive bureaucratic constraint for firms. Today there is broad consensus on the need to reform Regulation 17 and on the objectives that the reform must pursue, namely the effectiveness of competition policy and the simplification of administrative supervision.

10. The White Paper takes a clear stance in favour of the adoption of a directly applicable exception system. This option consists in abolishing the authorisation arrangements and the notification system which is their corollary. Under a directly applicable exception system, Article 81(3), like Articles 81(1) and 82, could be applied not only by the Commission but also by any national authority or court. Article 81 would become, like Article 82, a unitary prohibition. Anticompetitive practices which affected trade between Member States, i.e. those caught by Article 81(1), would be lawful *ab initio* if they met the conditions laid down in Article 81(3). No procedure for authorisation by an administrative authority, and hence no notification, would then be necessary. The Commission takes the view that adopting a directly applicable exception system would enable it to safeguard competition more effectively and to simplify administrative supervision, thus meeting the requirements of Article 83 of the Treaty.

11. Adopting a directly applicable exception system would improve the protection of competition in two ways: it would enable effective decentralisation of the application of the rules and it would make it easier for the Commission to refocus its work on restrictions that are really detrimental to competition. The

White Paper sets out the arguments in support of a particular option for reform but it none the less offers a basis for discussion. On the basis of the responses to the White Paper, the Commission will draw up a proposal for a regulation which will be presented to the Council and to Parliament. Other instruments will then need to be amended or produced.

b) *Review of the policy on horizontal agreements*

12. Work on the review continued in 1999, with the preparation of drafts of revised block exemption regulations on specialisation and on research and development, as well as draft guidelines on the applicability of Article 81 to horizontal co-operation agreements. The objective is to clarify the Commission's policy in the area of horizontal co-operation and to make it more effective for the future economic and legal environment. The approach is likely to be similar to that recently adopted for vertical agreements[8].

c) *Draft guidance notices on the Merger Regulation*

13. The Commission has carried out consultations in 1999 on three draft guidance notices on the Merger Regulation. The first was a revision of the current notice on restrictions directly related and necessary to the implementation of the concentration, which has been in operation since the Merger Regulation first came into force. The new draft notice takes into account the refinements made to the Commission's practice since that time. The second is an important new draft notice on remedies, which have become a vital tool in addressing competition problems raised in a large number of cases. The proposed notice sets out the general principles applicable, summarises the main types of commitment adopted to date and sets out the substantive and procedural requirements for submitting commitments to the Commission and their subsequent implementation by the parties concerned. The third notice concerns a proposal to simplify the handling of routine cases notified to the Commission. This is essential in order to ensure that the Commission's resources are utilised as efficiently as possible. The proposed notice sets out and explains the simplified procedure, which provides for approval of routine cases without a formal decision of the Commission. At the same time a number of safeguards are introduced to ensure legal certainty and transparency. The notices will be adopted next year[9].

II. Enforcement of competition laws and policies

1. Action against anticompetitive practices

a) *Summary of activities and statistics*

14. In the antitrust sphere there were two notable features. The first was an increase in the number of cases closed by way of formal decision (68 against 42 in 1998). Secondly, there was a drop in the number of new cases (388 against 509 in 1998). New cases comprise notifications (162 in 1999 against 216 in 1998), complaints (149 in 1999 against 192 in 1998) and ex officio proceedings (77 in 1999 against 101 in 1998).

15. The reduction in the number of notifications can probably be partly attributed to the 1997 notice on agreements of minor importance. It can also probably be attributed to companies anticipating the Commission's reforms in the area of vertical restraints, with the publication in 1998 of a communication setting out the Commission's proposals for reform in this field. As regards the reduction in the number of complaints, it must be noted that over the years there have been wide fluctuations (177 in 1997, 159 in

1996, 114 in 1995, 170 in 1994, and 110 in 1993). It is therefore too soon to draw any conclusions regarding the reduction in the number of complaints for 1999. Moreover, some cases which in the past may have been dealt with by the Commission are now being handled by national authorities. The reduction in the number of ex officio proceedings can be explained by the fact that 1997 and 1998 were record years because the Commission initiated a number of ex officio proceedings in the run-up to liberalisation in the telecoms sector on 1 January 1998.

b) Description of significant cases

\- Cartels

16. On 26 October the Commission found that the Dutch association of *electrotechnical equipment wholesalers*, the Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied (FEG), together with its largest member Technische Unie (TU), restricted competition by operating a system of collective exclusive dealing in combination with a system of price co-ordination on the Dutch wholesale market for electrotechnical equipment. The Commission found evidence that FEG prohibited the association of importers of such products in the Netherlands from selling to wholesalers which were not members of FEG. The prohibition deprived these wholesalers of their sources of supply and complicated and delayed entry to the Dutch market by foreign wholesalers. At the same time, the arrangement prevented suppliers from selling their products on the Dutch market via wholesalers other than FEG members. As the collective exclusive dealing arrangement deprived potential price-cutters, such as non-FEG wholesalers, of their sources of supply, the artificial price stability created by FEG and its members could not be endangered by outsiders. The Commission imposed fines of EUR 4.4 million on FEG and EUR 2.15 million on TU[10].

17. On 8 December the Commission adopted a decision[11] imposing fines totalling EUR 99 million on eight producers of *seamless steel tubes*: British Steel Limited (United Kingdom), Dalmine SpA (Italy), Mannesmannröhren-Werke AG (Germany), Vallourec SA (France), Kawasaki Steel Corporation, NKK Corporation, Nippon Steel Corporation and Sumitomo Metal Industries Limited (Japan). These firms, which are among the largest producers of seamless tubes in the world, had colluded until 1995[12] over keeping to their respective domestic markets for certain seamless tubes used in oil and gas prospecting and transportation. The products covered by the cartel were "standard" steel borehole pipes (commonly known as "oil country tubular goods", or OCTG) and "project" transportation pipes (commonly known as "line pipe"); both varieties are used in oil and gas exploration and transport. The cartel restricted competition in the common market by requiring that the domestic markets of the different producers (i.e. the German, French, Italian, UK and Japanese markets) be respected: the supply of seamless tubes to Member States of the Community where a national producer was established was limited by the other producers party to the agreement refraining from delivering tubes to those markets. In fixing the amounts of the fines, the Commission took account of the fact that, by definition, an agreement requiring the participating firms to keep to their domestic markets constitutes a very serious infringement of Community law, since it undermines the proper functioning of the single market. Pursuant to the Notice on the non-imposition or reduction of fines in cartel cases[13], the fines imposed on Vallourec and Dalmine were reduced, since they had co-operated with the Commission in establishing the facts.

- Opening-up of markets

18. In 1999 the Commission continued to demonstrate its determination to promote the opening-up of markets, a prime example of this being the case involving the creation of the joint venture *British Interactive Broadcasting Ltd (BiB*, which has since changed its name to "Open")[14]. Open is to provide a new type of service, digital interactive television services, to consumers in the United Kingdom. This involves putting in place the necessary infrastructure and services to allow companies, such as banks, supermarkets and travel agents, to interact directly with the consumer via the TV set. In this case, the main concern raised by the Commission pursuant to Article 81 was that the creation of Open eliminated BT and BskyB, two of the parents of BiB, as potential competitors in the digital interactive television services market. The Commission decided to clear the creation of BiB only after the parties had given substantial undertakings aimed at ensuring that the digital interactive television services market in the UK remained open to competition. In particular, as competition to BT and BskyB comes from the cable networks, the decision should ensure that third parties will have sufficient access to BiB's subsidised set-top boxes, as well as to BSkyB's films and sports channels, and that set-top boxes other that BiB's can be developed in the market.

19. Another case where the Commission was concerned to ensure that a market remained open was the *Microsoft Internet Explorer* licensing case[15]. In this case, the Commission approved Microsoft's revised licensing agreements with Internet Service Providers (ISPs) by way of a comfort letter. In 1998, Microsoft, the computer software manufacturer, formally notified to the Commission a set of revised agreements made with some European ISPs for the licensing and distribution of its Internet Explorer products. Microsoft's formal notification of its agreements followed an inquiry launched by the Commission's Directorate-General for Competition into a previous version of the agreements. During this inquiry, the Competition DG advised Microsoft to re-examine the agreements to ensure that they did not contain restrictions that might have the effect of illegally foreclosing access to the market for Internet browser software by Microsoft's competitors and of illegally promoting the use of Microsoft's proprietary technology on the Internet. Microsoft subsequently amended its agreements and notified the revised agreements to the Commission. There were two major changes: the ISPs' failure to attain minimum distribution volumes or percentages for Internet Explorer browser technology will no longer result in termination of their agreements, and ISPs are now allowed to promote and advertise competing browser software[16]. In the light of these changes the Commission cleared the agreements by way of a comfort letter. The comfort letter covers only the agreements between Microsoft and the ISPs and does not give any ruling on the overall behaviour of Microsoft as regards a possible abuse of a dominant position.

- Undertakings in a dominant position

20. On 10 February the Commission found that the *Finnish airport* operator Ilmailulaitos Luftvartsferket abused its dominant position by granting a 60 percent discount on landing fees at Helsinki, Vaasa, Turku, Pori and Tampere airports for domestic flights but not for intra-Community flights. It ordered Ilmailulaitos Luftvartsferket to terminate its discriminatory fees system, which had been introduced for no objective reason. These discriminatory fees favoured the access of domestic flights over those originating in other Member States[17].

21. Also on 10 February the Commission found that the operator of *Portuguese airports*, Aeroportos e Navegação Aerea-Empresa Publica, abused its dominant position by maintaining a tariff structure with a 50 percent reduction on landing fees for domestic flights but not for intra-Community flights and a volume discount ranging from seven percent to 32 percent according to the number of monthly landings at Lisbon, Oporto and Faro airports. As this discriminatory rate structure, for which there was no objective justification, had been introduced by government measure, the decision was adopted under Articles 82 and

86 (former Articles 86 and 90) of the EC Treaty. Again, these discriminatory fees favoured the access of domestic flights over those originating in other Member States[18].

22. The Commission set out its policy on commissions paid by airlines to travel agents in its decision in the *Virgin/BA* case.[19] Virgin's complaint against BA was the first of a series of complaints received by the Commission alleging abuses of a dominant position by airlines operating loyalty rebate schemes which effectively tie travel agents to a dominant airline. The Commission found that the commissions offered by BA to UK travel agents were equivalent to a "loyalty discount" i.e. a discount based not on cost savings but on loyalty. Schemes of this type have been consistently condemned as an abuse of a dominant position in other industries in the past. It is well-established Community law that a dominant supplier cannot give incentives to its customers and distributors to be loyal to it, thereby foreclosing market access by the dominant firm's competitors. As a dominant firm, BA should provide supplementary commissions to travel agents only where these reflect extra services provided by the agent or efficiencies realised by BA. The Commission is taking all measures necessary to ensure that the principles in this decision are applied to other EC airlines in equivalent situations. The Commission imposed a fine of EUR 6.8 million on British Airways for a serious abuse of a dominant position over a period of seven years.

23. On 20 July the Commission found that the local organising committee of the *1998 Football World Cup* (Comité Français d'Organisation de la Coupe du Monde de Football 1998, or 'CFO') had abused its dominant position by implementing discriminatory ticket sales arrangements in the run-up to the tournament that favoured consumers resident in France. The decision followed an investigation by the Commission, which revealed that some 570 000 entry tickets had been sold by the CFO exclusively to consumers able to provide an address in France. The practical effect of such a requirement was to deny the overwhelming majority of consumers outside France access to a significant proportion of entry tickets for finals matches. The Commission would normally impose a heavy fine where an undertaking abuses a dominant position in this manner. Nevertheless, given that the abusive ticketing arrangements as implemented by the CFO were similar to those adopted for previous World Cup finals tournaments, and that the CFO could not easily have relied upon previous decisions of the Commission or case-law of the Court of Justice in order to ascertain its responsibilities under EC competition rules, the Commission decided to impose no more than a symbolic fine of EUR 1 000 on the CFO. However, the decision sends a clear signal that the Commission expects future tournament organisers to ensure that their ticketing arrangements comply fully with EC competition rules before putting them into effect[20].

24. On 7 October the Court of First Instance upheld in all material respects the Commission's decision concerning infringements by *Irish Sugar* of Article 82[21]. The Commission had imposed a EUR 8.8 million fine on Irish Sugar and its subsidiary SDL for having abused their dominant position on the Irish markets for industrial and retail sugar. The abuses consisted in a series of commercial practices, primarily rebate policies, aimed at tying customers to Irish Sugar and thereby foreclosing market entry[22]. The Court confirmed the Commission's view that Irish Sugar and its subsidiary SDL held a (vertically) collective dominant position on the relevant markets, observing *inter alia* that their market power was not affected by any countervailing buying power on the part of their main customers. The Court went on to uphold the Commission's finding that various commercial practices engaged in by Irish Sugar and/or SDL had been abusive. It did, however, reduce the fine to EUR 7.88 million, on the ground that the Commission had not sufficiently proven one of the abuses during a two-year period. Irish Sugar has appealed against the judgement.[23]

- Developments in specific sectors

(a) Postal services

25. On 15 September the Commission approved, under the competition rules of the EC Treaty, the *Reims II Agreement* between 16 European postal operators on terminal dues[24]. "Terminal dues" is the term used for the remuneration that a postal operator sending cross-border mail has to pay to the receiving postal operator for delivering the mail to the addressees. The parties to the Reims II Agreement comprise all Member States of the EU except for the Netherlands. The public postal operators of Norway, Iceland and Switzerland are also parties to the agreement[25]. The main aims of the Reims II Agreement are to provide the parties with cost-based compensation for the delivery of cross-border mail which reflects more closely the real costs of delivery of each party, and to improve the quality of the cross-border mail service. Among other conditions specified in the decision, the parties will have to grant each other effective access to the "generally available domestic rates" (such as bulk rates for direct mail, printed matter or periodicals) in the country of delivery (so-called "Level 3 access"). Furthermore, the parties will have to introduce, by the end of 1999, a transparent cost accounting system ensuring that all significant cost elements can be identified, quantified, compared and vetted. The exemption was granted for the period 1 April 1999-31 December 2001. The Commission will closely monitor the development of tariffs for domestic and cross-border mail under the agreement and has already contacted the parties in this connection.

(b) Media

26. In its judgement of 8 July in Case T-266/97, the Court of First Instance (CFI) dismissed the application by *Vlaamse Televisie Maatschappij NV (VTM)* for annulment of the decision adopted on 26 June 1997 by the Commission under Articles 90 and 52 (now Articles 86 and 43) of the Treaty[26] concerning the exclusive right to broadcast television advertising in Flanders. The CFI first rejected two pleas claiming that the Commission had breached the right to be heard and the principle of legal certainty. With regard to the first plea, the CFI stressed that while an undertaking that was the direct beneficiary of the state measure being challenged had the right to be heard concerning the objections set out by the Commission in the letter of formal notice it addressed to the Member State in question, this did not mean that the Commission was required to communicate to that undertaking a copy of any complaint which had prompted initiation of the procedure or the comments submitted by the Member State in reply to the Commission's objections. The Court went on to point out that statements made in public by a Member of the Commission could not be regarded as committing the Commission, which operated according to the principle of collective responsibility, meaning in particular that it took its decisions as a body. With regard to the second plea, the Court ruled that the Commission did not have to examine on a single occasion the compatibility of a national regulatory measure with all of the Treaty rules. It then confirmed the Commission's assessment of the exclusive right, pointing out that, for Article 90 (now Article 86) to apply in conjunction with Article 52 (now Article 43), it was sufficient for the state measure concerned to be found to constitute a barrier to the right of establishment, there being no need to examine whether it constituted a disguised form of discrimination whose effects were protectionist[27].

(b) Transport

27. On 30 April the Commission adopted a decision prohibiting a capacity management programme between conference and non-conference members, the Europe Asia Trades Agreement (EATA), which operated in combination with direct price-fixing agreements[28]. The purpose of the EATA was to increase prices by establishing a capacity management programme concerning scheduled maritime transport services for the carriage of containerised cargo from northern Europe to the Far East. A capacity management programme is an agreement under which the parties agree not to use a proportion of the space

on their vessels for the carriage of goods in a particular trade. The proportion set aside is part of the forecast excess of supply over demand. In the case of the EATA up to 17 percent of the capacity of certain vessels was withdrawn from supply. On all occasions only the supply of eastbound capacity was restricted, with the result that Community exporters bore the brunt of the anticompetitive effects of the EATA. The EATA decision confirmed that an individual exemption for a capacity non-utilisation agreement is not possible when, as in the TAA case, it is a tool for maintaining excess capacity and artificially raising freight rates. Capacity regulation can only bring benefits if there is a real withdrawal of inefficient or outdated capacity so as to bring about a reduction of costs, leading to price reductions for shippers.

2. Mergers and acquisitions

a) Summary of activities and statistics

28. Merger activity continued to grow unabated in 1999. In 1999, 292 cases were notified, representing an increase of 24 percent from last year and an overall increase of 70 percent since 1997. There has been a fivefold increase in the number of cases notified under the Merger Regulation since 1990. The Commission took a decision in 270 cases - 13 percent more decisions than in 1998. A notable feature in 1999 was that a total of five important operations were abandoned by the parties concerned after the Commission had raised serious competition concerns. Moreover, in 1999 the Commission found it necessary to initiate the second stage of examination ("phase II proceedings"), lasting four months, in respect of 20 planned operations, as opposed to 12 in 1998. A total of eight cases where phase II proceedings were initiated were authorised subject to conditions, one was formally prohibited, five were withdrawn and nine were carried over to 2000. Also, more cases were cleared in the initial phase of the merger procedure (19 decisions compared to 12 last year) only after satisfactory undertakings were given to ensure that potential competition problems were resolved. The main factors underlying the current merger wave are the globalisation of markets, the introduction of the euro, the completion of the internal market and the forthcoming enlargement. These factors will continue to generate high levels of merger activity in Europe for the foreseeable future.

29. The geographical scope of mergers is also increasing. To analyse these cases properly the Commission has to continue to liaise closely and exchange information with other antitrust authorities. The experience gained from such co-operation in 1999 shows that it can significantly improve the outcome of investigations and the Commission attaches great importance to co-operation with other antitrust authorities.

30. Notable examples of cases which involved international co-operation in 1999 include two cases in the oil and chemicals sector (*Exxon/Mobil*[29] and *BP Amoco/Atlantic Richfield*[30]) which the Commission examined in close liaison with the US Federal Trade Commission. Co-operation with the American antitrust authorities also helped to identify common remedies in *Imetal/China Clays*,[31] where many of the product markets affected by the operation were found to be world-wide in scope. In *Honeywell/AlliedSignal*,[32] several of the commitments entered into were similar to the divestments ordered by the US Department of Justice. The Commission also co-operated closely with the US Department of Justice in *Ahlström/Kvaerner*,[33] which raised serious competition concerns in a number of world-wide chemical pulping markets. The increasing number of mergers with a global dimension and international effects means that co-ordination and information exchange is becoming increasingly important.

31. 1999 also saw significant developments in relation to oligopolistic dominance issues. Not only did the judgement of the Court of First Instance confirm the Commission's decision in the *Gencor/Lonrho* case[34] but it also accepted the Commission's approach in dealing with cases involving collective dominant positions. In 1999 the Commission investigated oligopolistic dominance in several cases (notably in

Airtours/First Choice,[35] *Exxon/Mobil* and *Danish Crown/Vestjyske Slagterier*[36]). While the analysis of each case is based on the facts of that particular case, some commonalities exist and these are examined in more detail below. The Commission recognises the need to further clarify its approach to dealing with oligopolistic dominance in order to avoid uncertainty within the business community. It will continue to pursue its work in this area.

32. The third keynote of the year was that, for the first time, the Commission imposed fines on a number of notifying parties for providing incomplete or misleading information in merger proceedings[37]. The relatively short time periods within which the Commission has to investigate notified operations and the fact that transactions are becoming increasingly complex make it essential for the achievement of a proper outcome that notifying parties provide the Commission with full and accurate information. By imposing these fines the Commission has emphasised the importance it attaches to compliance with these requirements. It is also considering whether it may be appropriate to propose to the Council that the maximum amounts of fines should be increased.

b) Summary of significant cases

1. Market definition

33. The wave of mergers in the oil and chemicals sector was one of the most important features of 1999 and the Commission investigated a number of operations in this sector. While earlier transactions in the oil and chemicals sector have essentially concerned the combination of businesses in limited fields of activities through the constitution of joint ventures, a number of the latest mergers are more global in the sense that they combine the whole of the merging parties' activities. The Commission opened full investigations into three operations in the oil and chemicals sector (*Exxon/Mobil*, *BP Amoco/Atlantic Richfield* and *Total/Elf Aquitaine*[38]). The analyses covered the whole oil and gas chain, from oil exploration to refining and retail fuel sales. Of particular interest is that, for the first time, the Commission investigated in detail the upstream markets for the exploration and development of crude oil and natural gas. These investigations were carried out in order to establish whether the mergers between Exxon and Mobil and that between BP Amoco and Atlantic Richfield would result in too small a cluster of oil companies capable of searching for and developing the unexplored reserves that will be consumed 10 to 15 years from now. They indicated that the so-called "super majors" (the two merging companies together with Shell) would still face competitive constraints from smaller oil companies. Moreover, they revealed that the countries in whose territory oil and gas is found have no incentives to enable oil companies to restrict production. In addition, the Commission found that, because of size differences, smaller explorers would not compete for the same type of exploration rights as the larger explorers and would not be dependent on them to sell their oil. It therefore concluded that no dominant positions would be created or strengthened in these upstream markets.

2. Collective and single dominance assessment

34. Following the judgement of the European Court of Justice in the *Kali und Salz*[39] case in 1998, where the Court confirmed the application of the Merger Regulation to collectively dominant positions, the Commission's jurisdiction to deal with oligopolies and the approach adopted was confirmed by the judgement of the Court of First Instance in *Gencor/Lonrho*. The judgement, delivered in March, is significant in a number of respects. First, the Court confirmed the Commission's approach to tackling collective dominant positions. In particular, it accepted that market characteristics such as market transparency, homogeneity of the product, market maturity, low rate of innovation, cost structures and multi-market contacts can be used in identifying whether markets are prone to oligopolistic dominance.

Second, it upheld the Commission's analysis as to how the operation would have changed the competitive relations between the competitors and thereby made anti-competitive parallel behaviour more likely. Third, it concluded that structural links are not necessary for a finding of collective dominance. Although the Court did not provide any guidance as to which of the above factors should be considered particularly important in order to find collective dominance, it accepted that all these factors can be indicators of whether markets are prone to exhibit anticompetitive parallel behaviour.

35. The Commission examined the issue of collective dominance in three phase II cases in 1999 subsequent to the Court's judgement. In the *Airtours/First Choice* case, it eventually prohibited the operation on the grounds that it would have led to an oligopoly of three companies on an already highly concentrated market. In *Exxon/Mobil*, it found that the operation would have led to a strengthening of the existing oligopoly in the national long-distance wholesale transmission of natural gas in Germany. It also found that, in view of the equity links between Exxon, BP/Mobil and Aral and the other structural factors of the industry, the operation would have created or strengthened oligopolistic dominant positions in the markets for the distribution of fuels in Germany, Austria, the Netherlands, Luxembourg, the UK and on French toll motorways. A point of interest is the fact that, in motor fuel retailing, the Commission found that the merger would have created or reinforced an oligopoly in a number of national markets which were only moderately concentrated (a minimum of three players in the UK to a maximum of seven players in Luxembourg). Despite the relatively low levels of concentration in this case, the markets were found to display all the characteristics typical of markets conducive to oligopoly. Finally, in *Danish Crown/Vestjyske Slagterier*, the Commission found that a duopoly would have supplied 70 percent of the Danish market for fresh pork meat sold through supermarkets. In all these cases the Commission investigated market characteristics such as market transparency, homogeneity of the product, maturity of the market, rate of innovation, similarity of cost structures, multi-market contact, links (structural or other) in order to establish whether the markets in question are conducive to oligopolistic dominance. The Commission has proceeded on a case-by-case basis in its analysis of these characteristics. However, the relevance of each of the market characteristics depends on the context of a specific market.

36. In *KLM/Martinair*[40], the Commission decided to open a full investigation based on competition concerns regarding the supply of seats to tour operators, for incorporation into package tours for Dutch customers, on flights from Amsterdam/Schiphol to destinations around the Mediterranean. Together, the two airlines would have become by far the largest single carrier from Amsterdam to these destinations. KLM is the largest and Martinair the second-largest Dutch airline. Both companies are based at Amsterdam/Schiphol airport. The operation consisted of the acquisition by KLM of the 50 percent of those shares in Martinair which it did not already own. These shares are currently owned by Nedlloyd. The operation was a change from joint control of Martinair by KLM and Nedlloyd together to one of sole control by KLM. In the circumstances of the case, this change would have materially reduced Martinair's remaining independence from KLM, with serious consequences for competition. The Commission considered that the operation would have allowed KLM to fully integrate the operations of Martinair with those of its subsidiary Transavia. KLM (principally through its subsidiary Transavia) already supplied a substantial share of the supply of "holiday" flights – whether on chartered or scheduled services - to tour operators in the Netherlands. Martinair is an equally significant competitor in this market, and together the two airlines supply around two thirds of it. The Commission was therefore concerned that the operation would have created a dominant position, regardless of whether the relevant market consisted of individual routes, a bundle of routes to certain regions or of all flights to the Mediterranean. A prohibition decision was proposed but the parties chose to abandon the operation before a decision was taken.

37. Similarly, the proposed alliance between the Rotterdam Port Authority and the container terminal operators Hutchison and ECT[41] would have led to a significant addition of capacity, given that the first, fourth and ninth largest container terminal operations in northern Europe would have been brought under the joint control of Hutchison. The Commission's investigation showed that the merger would have created a dominant position for ECT/Hutchison on the market for stevedoring services to deep-sea container ships

in northern Europe. As a result of the merger, ECT/Hutchison would have had a market share of 36 percent on this market with the nearest competitors having less than half of the joint market share of the parties. However, ECT/Hutchison's combined market position would have been much stronger than reflected by their market share, given their strong joint position in transhipment, their leading position in Far East cargo and the fact that their terminals are particularly suited to serving larger deep-sea vessels. The operation was abandoned before a formal decision was adopted.

In another case, *Deutsche Post/trans-o-flex*, the parties also abandoned their agreement following information from the Commission that a statement of objections would be sent setting out serious competition concerns.

3. Phase II Remedies

38. In 1999, nine phase II decisions were adopted. Of these, eight resulted in conditional clearance decisions.

39. *Rewe/Meinl*[42] is a significant retail case where the focus of concern was the procurement market. The take-over of Meinl, the fourth largest Austrian food-retail chain, by the market leader Rewe/Billa would have created a dominant position on the Austrian food retail market and on nine regional procurement markets in Austria for daily consumer goods. The Commission considered the strong link between the retail market and the procurement side. In the present case, Rewe/Billa was already market leader, and the only retailer expanding at a rapid pace. As a result of the acquisition, the new entity would have achieved a market share of well over 30 percent, considerably more than its nearest competitor, Spar. In order to evaluate the real strength of the new entity on the relevant markets, the Commission looked at the market shares in combination with a number of additional advantages the parties have, such as, for example, their centralised structure, their high share of favourable locations, the high combined share of profitable shops, etc. The Commission concluded that the operation as notified in its original form would also have increased the already existing high entry barriers to the Austrian food retail market. The parties made comprehensive commitments removing the Commission's concerns on both the retail and procurement side of the deal. Following the commitments, Rewe/Billa acquired only 34 percent of Meinl's food retail activities. Rewe/Billa also undertook not to acquire any outlets to be used for food retailing in Eastern Austria. Following the undertakings, Rewe/Billa will not strengthen its existing strong position and Meinl will remain active as a competitor. The reduction of market share on the retail market will also have a positive impact on the procurement markets by reducing the dependency of suppliers operating on that market.

40. In the proposed merger between *Danish Crown* and *Vestjyske Slagterier* the operation would have led to the creation of a duopolistically dominant position of the parties together with another large Danish co-operative slaughterhouse, Steff-Houlberg. The duopoly would have accounted for about 70 percent of the market for fresh pork meat sold through supermarkets. In this market, competitive actions by competitors are very transparent due to the weekly pig price quotation. In addition, there were a number of structural links and other similarities between the parties and the number two competitor, Steff-Houlberg. In particular, Steff-Houlberg was already channelling a large volume of meat through companies controlled by the parties, and the merged entity and Steff-Houlberg would have had similar cost structures, technology and sales channels. The Commission consequently found that, owing to the market structure, neither of the duopolists would have had any incentives to compete with each other on the Danish market. To remedy these concerns, the parties committed themselves to abolishing the pig price quotation and the related rules concerning the basis on which farmers are paid. Furthermore, the parties undertook to sever all structural commercial links (common sales channels) with third parties, notably Steff-Houlberg. Finally, the parties undertook to sell slaughter capacity amounting to potentially more than 10 percent of the Danish consumption of fresh pork meat sold through supermarkets and to loosen the

exclusive supply restrictions on their farmers to supply other slaughterhouses. The Commission found that these remedies would make the market less transparent, allow divergent cost structures, sever the links between the parties and their Danish competitors and provide an alternative to Danish supermarkets. On balance, the Commission found the remedies sufficient to remedy the competition problem created by this merger.

41. In *Exxon/Mobil*, the operation as notified would have created or strengthened dominant positions in a large number of markets. Serious competition concerns arose, amongst others, on the markets for wholesale transmission of natural gas in the Netherlands and Germany, motor fuel retailing in several Member States, group I base oils (an ingredient for the production of lubricants) in the EEA and aviation lubricants world-wide. In order to remedy these concerns, the parties offered what is the most comprehensive remedy package accepted under the Merger Regulation to date. Several of these remedies raised particularly difficult issues. For example, Mobil agreed to withdraw from its joint venture with BP covering motor fuel and lubricants retailing in Europe. In relation to aviation lubricants, the Commission obtained the divestiture of Exxon's business after the parties had initially proposed to divest Mobil's aviation lubricants business. The Commission considered the sale of Mobil's business to be inadequate because, even though it would have eliminated the overlap between the parties, the Commission found that Mobil's business was more integrated with the Mobil group than that of Exxon. Therefore, Exxon's aviation lubricants business was considered to be more viable as a stand-alone entity, allowing the eventual purchaser to compete independently from the parties.

42. At the same time as the Commission was investigating Exxon/Mobil, it was also investigating another important merger in the oil and chemicals sector: the take-over by *BP Amoco* of *Atlantic Richfield*. To illustrate the rapid pace of consolidation in this sector, the BP Amoco Group had itself only been formed after the merger between The British Petroleum Company and Amoco Corporation in December 1998. As initially notified, the operation would have created dominant positions on the market for the transport of unprocessed natural gas to the UK mainland through off-shore pipelines from fields in the southern North Sea ("SNS") sector of the UK continental shelf and also on the market for processing natural gas in processing facilities on the UK mainland servicing the SNS area. In order to eliminate the competitive concerns, BP Amoco undertook to divest certain pipeline and processing interests, which had the effect that the merged entity's position remains similar to that of BP Amoco's beforehand.

43. The Commission carried out an in-depth investigation into the merger between the Swedish *Telia* and the Norwegian *Telenor*[43], and concluded that the concentration as originally notified would have caused serious competition concerns in a number of telecommunications and related services markets in both Sweden and Norway. The operation would also have led to adverse competition effects in the Irish mobile telephony market, where the merged entities would have had control over both of the only two operators active on the Irish market. Lastly, there were serious competition concerns in a number of Nordic, Swedish and Norwegian television services markets. The operation was subject to far-reaching commitments to open up access to the local access networks for telephony as well as to divest Telia and Telenor's respective cable-TV businesses and other overlapping business. More particularly, Telia and Telenor committed themselves to divesting all existing overlaps in the field of telecom services. The parties also undertook to sell either company's stake in one of the two existing Irish mobile telephony operators. The parties also undertook to divest their respective interests in cable-TV networks in Sweden and Norway and to implement a set of measures to promote competition, in the last link between the local exchange and the consumer (the local loop), in both countries. The *Telia/Telenor* case raises a number of interesting issues and although the merger has since fallen through, the issues of substance in the Commission's decision remain valid.

44. As the Commission's decision not to accept the proposed remedies in *Airtours/First Choice* demonstrates, appropriate remedies in oligopoly cases can amount, in effect, to attempting to create (or recreate) a competing business capable of exerting sufficient competitive pressure. As such, it is

particularly important to ensure that the divested assets, together with those (if any) of their ultimate acquirer(s), will prove sufficient to maintain competition at an acceptable level, given also that the market share and strength of the merged entity will also have increased as a result of the merger. Airtours' principal remedy proposal consisted of an undertaking to divest certain tour operating assets, including brand names and existing bookings, to a suitable third party. This proposal was found to be inadequate. In particular, it did not address the problem of access for the prospective buyer to a suitable channel of distribution for its holidays. It would not, therefore, remedy one of the main competition problems of the merger. This has a number of implications. The number of prospective purchasers is reduced by the need to exclude, as a rule, the other oligopolists, although suitable acquirers may still be found. That will also, other things being equal, increase the scale of the divestment needed to resolve the competition problem, by comparison with cases of single-firm dominance, since the buyer's existing business is likely to be much smaller. Although this is not a problem confined to oligopoly cases, it may be difficult or impossible for the merging parties to sever a proportionately sized, viable business, as opposed to a disparate collection of assets, from the whole. This is not as a rule problematic in many cases where, for example, concerns arise in areas which are largely peripheral to the parties' "core" businesses. In those cases the whole of the overlap can be divested without seriously prejudicing the commercial and economic rationale for the merger. But where the overlap arises in a core business, that may not be possible. In such cases, the merger may have to be prohibited.

45. A more straightforward remedy was found in the merger between *Sanitec* and *Sphinx*[44] in the European bathroom products sector. An in-depth inquiry into the transaction showed that the operation as notified would have led to adverse competition effects in ceramic sanitaryware and other bathroom products in the Nordic countries. The high market shares (up to 90 percent), the absence of countervailing buying power and only marginally present competitors led the Commission to conclude that the operation would have had a particularly negative effect on Nordic customers. Sanitec subsequently offered a full divestiture of Sphinx's Gustavsberg business in the Nordic countries. A notable feature of these undertakings is that while the Commission did not find competition problems in taps and mixers as such, the possibility for the potential buyer to buy also this business was considered important for the viability of the divested business. The option to acquire also the taps and mixers business will ensure that the buyer will be able to offer a full range of products and compete fully with Sanitec on the Nordic market.

46. In *Honeywell/AlliedSignal*, the Commission's investigation focused on the markets for avionics for commercial applications (products generally found in aircraft cockpits, such as communication and navigation equipment). The operation combined the first and the third largest world-wide suppliers of commercial avionics with major presence in all aviation segments. The combined market shares produced by the merger in some markets were as much as 100 percent in weather radars for civil helicopters and Terrain Awareness Warning Systems (TAWS). The combined entity would have reached market shares of up to 74 percent in Airborne Collision Avoidance Systems (ACAS) processors and ModeS Transponders and there would have been only one remaining competitor in a market which exhibited high barriers to entry. Furthermore, the parties' strong position in the market for TAWS would have had an effect on the future market for Integrated Hazard Awareness Systems (IHAS), since the TAWS is a key part of this system. The new entity would have been able to technically link its engineering force and technology for the next generation of IHAS and thereby foreclose competition. In order to remedy their resulting dominant positions, the parties offered to divest Honeywell's entire ACAS business and AlliedSignal's weather radar business. With respect to TAWS, commitments were given to supply third parties open interface standards of other avionics products of the new entity, so that new suppliers can have their products installed on aircraft equipped with other avionics from the new entity. Regarding IHAS, there will be an obligation to supply third parties with TAWS technology as well as interface data so that future product development by competing suppliers can continue to take place.

4. Phase I Remedies

47. As in cases where the Commission opened an in-depth investigation, cases where remedies were accepted in phase I typically involve substantial and complex divestments. The most comprehensive undertakings in phase I proceedings were accepted in the merger between *Hoechst* and *Rhône-Poulenc* into *Aventis*[45]. Those undertakings included the divestment of the chemical businesses of Rhodia and Celanese as well as Hoechst's veterinary division, HR Vet. In addition, the parties submitted commitments in response to competition concerns in various pharmaceutical and agrochemical markets as identified by the Commission during its investigation. The existence of Phase I remedies facilitates the speedy clearance of operations. This can, however, be done only if the Commission is certain that all potential competition problems are resolved. Moreover, it is essential that the Commission be given sufficient time to investigate notified transactions, in particular if it is likely that they could be cleared only subject to undertakings. For instance, despite the need for substantial undertakings, the *Hoechst/Rhône-Poulenc* case was able to be cleared in phase I because there were detailed discussions between the parties and the Commission before the operation was formally notified. Therefore, in cases where the parties suspect that the transaction will lead to competition concerns, it is important that they contact the Commission at the earliest possible stage, and before formal notification takes place.

5. Article 2(4)

48. The amendments to the Merger Regulation, which came into force on 1 March 1998, extended the regulation's scope to include full function co-operative joint ventures. According to Article 2(4) of the Merger Regulation, a joint venture having as its object or effect the co-ordination of the competitive behaviour of its parent companies also has to be appraised in accordance with the criteria of Article 81(1) and 81(3) of the EC Treaty. In 1999, 19 such cases were investigated and 15 decisions taken. Four co-operation cases were cleared only after the parties submitted undertakings.

49. In *BT/AT&T*,[46] a phase II case, there was a risk of parental co-ordination between ACC, a wholly owned subsidiary of AT&T, BT and Telewest, in which AT&T, through TCI, holds a 22 percent stake regarding the distribution of AT&T/Unisource services in the UK. The Commission raised concerns that the joint venture could lead to co-ordination of the parties' competitive behaviour. In order to remove these concerns, AT&T offered to divest ACC UK. AT&T also committed itself to more structural separation between AT&T and Telewest. Furthermore, AT&T undertook to give another distributor the option to distribute AUCS services (i.e. global telecommunications services offered by the company AUCS, a joint venture between AT&T and Unisource) in the UK, as AT&T UK will be wound up. The Commission declared the concentration compatible with the common market subject to full compliance with these undertakings.

50. In the *Skandia, Storebrand* and *Pohjola* case,[47] concerning the insurance sector, the Commission also approved the joint venture with commitments. The Commission concluded that the operation would have only minor effects on competition in the Nordic countries, with the exception of Norway, where Skandia has a significant market presence through Vesta, a wholly owned subsidiary of Skandia P&C Insurance Company Ltd (publ). In order to remedy the competition concerns arising from the combined market shares of Storebrand and Vesta in Norway, Skandia agreed to divest its Vesta Forsikring A/S subsidiary there, thus avoiding a further strengthening of Storebrand's market position.

51. In *Alitalia/KLM*,[48] the Commission authorised the concentration during the first phase investigation in view of the companies' significant undertakings to promote the entrance of new competitors on two hub-to-hub routes, Amsterdam-Milan and Amsterdam-Rome, where the Commission found that the alliance between Alitalia and KLM would have created a monopoly. To remedy these concerns, Alitalia and KLM proposed a set of measures to facilitate entry in line with previous decisions in

the air transport sector. The extensive undertakings offered included: a commitment to make available slots to new entrants on the routes in question (up to 336 weekly slots); a commitment to reduce the parties' frequencies on the Amsterdam-Milan and/or Amsterdam-Rome routes when an entrant starts operations; a commitment to enter into interlining agreements with the new entrant and to give any new entrant the opportunity to participate in KLM's and Alitalia's Frequent Flyer Programme; a commitment to refrain from tying travel agents and corporate customers in Italy and the Netherlands respectively with loyalty or other similar rebate schemes; and a commitment to ensure that, once a competing airline has entered on the route(s) in question, the first screen of the computer reservation system (CRS) is not filled with the flights of the Alliance and that consumers will be informed about the precise code-share arrangements.

52. The co-operative joint venture between *Fujitsu* and *Siemens*[49] was cleared subject to the companies' compliance with certain commitments. This operation combines the European businesses of Siemens and Fujitsu for the development, manufacture and sale of computer hardware and related products, including desktop PCs, laptops, workstations, servers and storage systems. However, the Commission found that there was a risk of parental co-operation on the financial workstations market. To address the Commission's serious competitive concerns in that market, Siemens undertook to divest Siemens Nixdorf Retail and Banking Systems GmbH, a subsidiary active on that market. Joint venture cases of this kind involve the application of Article 81 and, therefore, are mostly dealt with by the Antitrust Directorates within the Directorate-General for Competition rather than by the Merger Task Force.

6. Referrals to Member States

53. Under Article 9 of the Merger Regulation, a case may be referred to a particular Member State if the concentration threatens to create or to strengthen a dominant position as a result of which effective competition will be significantly impeded on a market within a particular Member State which presents all the characteristics of a distinct market.

54. In 1999, three cases were referred in full and two partially to Member States. One request for referral was refused. In *Rabobank/Beeck/Homann*,[50] the Commission accepted a request for referral made by the German competition authorities. The case, which concerned the German delicatessen food sector, risked creating a dominant position in Germany or in part of it. As this threat was limited to a distinct market in Germany, the Commission referred the case to the Bundeskartellamt. The Commission granted a referral to Spain in the *Heineken/Cruzcampo* case,[51] which concerned beer distribution in Spain. The grounds for referral were that competition issues were either regional or national in nature. The Commission further decided to refer to the French national authorities the proposed concentration notified by the two rock-salt producers in France, *Compagnie des Salins du Midi et des Salines de l'Est (CSME)* and *MDPA/SCPA*.[52] The planned joint venture threatened to create or strengthen a dominant position on the market for ice-control salt in the north-east of France. In this sector, the dimension of the geographic markets is limited by the high proportion of transport costs in the final price of ice-control salt. An initial analysis of the markets showed that the north-east of France could be defined as a distinct market. The other French regions using ice-control salt were also likely to be affected by the operation. On the basis of this, the Commission decided to refer the case to the French authorities. In addition, the take-over of Petrofina by Total was partially dealt with by the French competition authorities. The French dealt with the effects of the operation on the petroleum storage infrastructure in the southern part of France (i.e. Languedoc-Roussillon), where the transaction raised serious doubts. The *Totalfina/Elf Aquitaine* case[53] was also partially investigated by the French authorities.

55. The UK competition authorities requested a referral of part of the *Exxon/Mobil* case, namely that concerning motor fuel retailing in the north-west of Scotland. However, the Commission had already raised concerns in the motor fuel retailing market covering the whole of the UK. Given that the request to deal with the effects of the merger in the north-west of Scotland fell within the scope of this enquiry, the

Commission decided to deal with these concerns as part of its overall assessment of the UK motor fuel retailing market.

56. In *EDF/London Electricity*[54] the United Kingdom authorities requested a referral under Article 9(4). The UK authorities were concerned that the Director General of Electricity Supply, the statutory electricity industry regulator, should remain able to take certain measures to ensure regulatory transparency and protect consumers. The Commission found, however, that the Article 9 request did not meet the criteria for referral of a case to a Member State, because the operation did not strengthen a dominant position on either of the distinct markets concerned (Article 9(2)(a) of the Merger Regulation).

III. Contribution to the formulation of other policies

57. The Directorate General for Competition contributes to the elaboration of all major policies within the scope of activity of the European Commission. Issues on which it has been consulted in 1999 include the overall strategy for Europe's internal market, the development of broadband access platforms, the exhaustion of trade mark rights, the environmental liability, the coherence between development policy and other Community policies etc.

IV. Resources

1. Resources overall (current numbers and change over previous year):

a) Annual budget 1999: EUR 5.255.711

b) Number of employees (person-years):

	5/1999	6/2000
⇨ economists:	42	67
⇨ lawyers:	107	139
⇨ [lawyer AND economist]	10	7
⇨ other professionals	43	34
⇨ support staff	284	290
⇨ all staff combined	486	537

2. Human ressources (person-years) applied to:

a) Enforcement against anticompetitive practices: 192.5

b) Merger review and enforcement : 74.5

c) Control of State aid : 109

d) General operational support and co-ordination : 65

e) Administrative support : 66

3. Period covered by the above information: 1999 (except where otherwise specified)

V. Reports and studies on competition policy issues

58. On 12 May the Commission adopted a report[55] to the Council and the European Parliament on the operation of Council Regulation No 1534/91[56] and Commission Regulation No 3932/92,[57] which applies Article 81(3) of the Treaty to certain categories of agreements in the field of insurance. The report chiefly describes how the Commission has applied the exemption system over the last six years. It does not contain proposals for amendments, since the current exemption regulation will be valid for another four years, but it does set out a number of forward-looking ideas on which the Commission wishes to receive comments from the industry, national supervisory and competition authorities and national courts.

59. On 27 July the Commission decided to launch an inquiry into the telecommunications sector, pursuant to Article 12 of Regulation 17/62, covering three areas: leased lines, especially international leased lines, mobile roaming services, including national roaming, and the local loop (line rental and local calls. The aim of the Commission's inquiry is to establish whether current commercial practices and prices infringe the EU competition rules, in particular the prohibition of restrictive practices and abuses of dominant positions (Articles 81, 82, and/or 86 of the EC Treaty). This is only the third sector inquiry ever launched by the Commission.

60. The Commission's report to the European Council on sport[58] contains a section setting out the Commission's preliminary thinking on application of the competition rules in this area. The report outlines preliminary conclusions regarding the application of the competition rules in the field of sport, giving examples of practices of sports organisations.

61. Article 11 of Regulation No 1475/95[59] (the block exemption regulation for motor vehicle distribution) requires the Commission to evaluate on a regular basis the application of the Regulation, particularly as regards the impact of the exempted system of distribution on price differentials of contract goods between the different Member States and on the quality of service to final users. The evaluation of car price differences has been ongoing since 1993, with the twice-yearly publication by the Commission of its Report on Car Prices within the European Union[60], accompanied by a press release. This report is aimed at analysing car price differentials across the European Union and improving price transparency for

consumers. Analysis of these reports compiled as of 1 May and 1 November reveals that price differentials are still too high for many models[61].

62. On 10 November the Commission adopted its fifth report on the implementation of the telecommunications regulatory package (COM(1999) 537 final). This report takes stock of the results of telecommunications liberalisation in the Member States. The fifth report was prepared by the "joint team" (body responsible for implementing Community telecommunications legislation) comprising officials drawn from the Directorates-General responsible for telecommunications and for competition. This team heard comments from incumbent operators, new entrants and the national regulatory authorities from each Member State during bilateral meetings held in Brussels and collected statistics from the authorities, which are summarised in the annex to the report. The report's main conclusion is that the introduction of competition has boosted the European Union's telecommunications services sector, which registered an annual growth in 1999 of 10.3 percent, four times greater than the growth of GDP in the EU. In terms of value, the telecommunications services market was worth EUR 183 billion. The most dynamic segment of the market was mobile telephony, which grew by 31.5 percent in 1999 to a value of EUR 49 billion. Furthermore, thanks to competition, residential telephone tariffs for international calls fell by 40 percent on average between 1997 and 1999 in most Member States;[62] business tariffs for similar calls were also down in most Member States (on average by 25 percent over the same period). Tariffs for 10-minute regional and long-distance calls fell by 13 percent and 30 percent respectively.[63] The overview of quality indicators annexed to the report confirms that voice telephony services offered by incumbent operators have improved. However, tariffs for local calls have not fallen significantly. The statistical data annexed to the report also confirm the rapid growth in mobile and Internet penetration in the European Union, which is underpinned by the keen competition on these markets.

NOTES

1. OJ L 336, 29.12.1999.

2. Respectively Regulation (EEC) No 1983/83 (OJ L 173, 30.6.1983) and Regulation (EEC) No 1984/83 (OJ L 173, 30.6.1983), prolonged by Regulation (EC) No 1582/97 (OJ L 214, 6.8.1997), and Regulation (EEC) No 4087/88 (OJ L 359, 28.12.1988).

3. OJ C 270, 24.9.1999. The Guidelines were adopted on 24.05.2000 (http://europa.eu.int/comm/competition/ antitrust/legislation/vertical_restraints/guidelines_en.pdf) and will be dealt with in more detail in the next report.

4. See IP/99/413, 23.6.1999.

5. OJ L 131, 27.5.1999.

6. OJ L 155, 26.6.1993; as last amended by Regulation (EC) No 1523/96 (OJ L 190, 31.7.1996).

7. COM(1999) 101 final (OJ C 132, 12.5.1999).

8. The draft were published for public comment on 27.04.2000 (http://europa.eu.int/comm/competition/antitrust/ others/horizontal/reform/consultation/) and will be dealt with in more detail in the next report.

9. See the Competition DG’s website (http://europa.eu.int/comm/competition/ mergers/legislation/draft_notices/).

10. OJ L 39, 14.4.2000; Bull. 10-1999, point 1.3.32; press release IP/99/803, 26.10.1999.

11. Bull. 12-1999; press release IP/99/957, 8.12.1999; not yet published in the *Official Journal*.

12. Except in the case of British Steel, which ceased producing the pipes in 1994.

13. OJ C 207, 18.7.1996.

14. See press release IP/99/686, 16.9.1999.

15. See press release IP/99/317, 10.5.1999.

16. Further details of the notification of the Microsoft Internet Explorer Licensing Agreements were published in the *Official Journal of the European Communities* (OJ C 175, 9.6.1998).

17. OJ L 69, 16.3.1999; Bull. 1/2-1999, point 1.3.79.

18. OJ L 69, 16.3.1999; Bull. 1/2-1999, point 1.3.80.

19. Decision of 14 July 1999. Not yet published in the *Official Journal*.

20. OJ L 5, 8.1.2000.

21. Decision of 14 May 1997 (OJ L 258) and Case T-228/97 *Irish Sugar* v *Commission*.

22. For more details see 1997 Competition Report, point 65.

23. Case C- 497/99 P *Irish Sugar plc* v *Commission.*

24. Commission Decision of 15 September 1999 in Case No IV/36.748 – *Reims II* (OJ L 275, 26.10.1999).

25. The content of the amended Agreement for the Remuneration of Mandatory Deliveries of Cross-border Mails was published in the *Official Journal* (OJ C 371, 1.12.1998).

26. Case No IV/35.760 – *VT4/Vlaamse Gemeenschap+VTM* (OJ L 244, 6.9.1997).

27. 1997 Competition Report, Part Two, Chapter II.A.2.

28. Commission decision of 30 April 1999 in Case No IV/34.250 - *Europe Asia Trades Agreement* (OJ L 193, 26.7.1999); IP/99/313.

29. Case No IV/M.1383.

30. Case No IV/M.1532.

31. Case No IV/M.1381.

32. Case No IV/M.1601.

33. Case No IV/M.1431.

34. T-102/96 *Gencor* v *Commission*, not yet reported.

35. Case No IV/M.1524.

36. Cases Nos IV/M.1313.

37. Deutsche Post AG (Deutsche Post/Trans-o-flex), KLM (KLM/Martinair), Sanofi and Synthélabo (Sanofi/Synthélabo).

38. Case No IV/M.1628.

39. Joined Cases C-68/94 and C-30/95 *French Republic, SCPA and EMC* v *Commission* [1998] ECR I-1375.

40. Case No IV/M. 1328.

41. Case No IV/M.1412.

42. Case No IV/M.1221.

43. Case No IV/M.1439.

44. Case No IV/M.1578.

45. Case No IV/M.1378.

46. Case No JV.15.

47. Case No JV.21.

48. Case No JV.19.

49. Case No JV.22

50. Case No IV/M.1461.

51. Case No IV/M.1555.

52. Case No IV/M.1522.

53. Case No IV/M.1628.

54. Case No IV/M.1346.

55. COM(1999) 192 final. Text available on the Internet:

http://europa.eu.int/comm/dg04/entente/other.htm#dgiv_pdf_ins_rep1999 .

56. OJ L 143, 7.6.1991.

57. OJ L 398, 31.12.1992.

58. COM(1999) 644 final.

59. Commission Regulation (EC) No 1475/95 of 28 June 1995 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements (OJ L 145, 29.6.1995). See also 1996 Competition Report, points 54-56, and IP/00/121, 7.2.2000.

60. Available from the Commission Offices in the Member States and on the homepage of the Competition Directorate-General (http://europa.eu.int/comm/dg04/aid/en/car)

61. See press releases IP/99/60, 1.2.1999 and IP/99/554, 22.7.1999.

62. For ten-minute calls. Source: Eurodata Foundation.

63. Fifth Report on the implementation on the telecommunications regulatory package (COM(1999) 537 final, p. 2).