

13 November 2006

HOUSE OF LORDS EUROPEAN UNION COMMITTEE INQUIRY AN EU COMPETITION COURT

1. NEED FOR ACTION AT UNION LEVEL

UNICE is resolutely in favour of developing and sustaining a competitive commercial environment in the EU. Competition provides the best incentive for business efficiency, encourages innovation and guarantees consumers the best choice. Community competition law is thus crucial and it is of the utmost importance for business that the application of these rules is of good quality, fair, transparent, effective and efficient. Considering that the Commission acts in fact as both investigator and decision-maker in Community competition proceedings, it is important that there are effective external and internal controls.

Effective controls would contribute to a more real separation of investigating and decision-making responsibilities and an impartial re-examination of the legal and economic arguments to a case. The current system of judicial review is unsatisfactory because the length of proceedings discourages and frustrates litigation and causes legal uncertainty for companies.

Companies are hindered by uncertainty regarding the validity of their business strategies, whether related to a planned merger, to cooperation, or to the distribution or marketing of their products. More and more appeals against Commission decisions (both against antitrust cases and decisions to allow or prohibit a merger) and long delays before the Court of First Instance (CFI) takes a decision (e.g. companies engaged in a merger may have to wait a year or more for an appeal to be heard and decided) harm the effectiveness of companies to respond rapidly to competitive pressures. This in turn harms the effectiveness of competition and EU competitiveness overall.

There is thus a clear need to improve the system and the best solution in UNICE's view would be, similar to the CBI's suggestion, the creation of a new Competition Court to operate as a judicial panel of the Court of First Instance as provided for by Article 225a EC.

2. REFORM OF THE CFI

The CFI has introduced measures to reduce delays for cases under its jurisdiction ("expedited procedure") but the resulting reduction of delays is not sufficient considering that, for example, merger cases should be decided within six months. Although not required by its rules of procedure, the use of French as the working language of the CFI is an important reason for delays which could be resolved by opting for English in some instances, but, as the CBI has pointed out, a special

Competition Court would have advantages which would not be achieved by reforming the rules and procedures of the CFI. The rules of procedure of the Competition Court could be specifically designed to achieve a speedy resolution of cases and allow for mechanisms to prioritise cases. Moreover, any increase in the rest of the CFI's caseload would not impact on the cases handled by the Competition Court and its judges would be free to spend all their time on competition cases.

However, since it is likely to take some time to set up a Competition Court, UNICE considers that a sensible interim solution would be to establish a specialist chamber within the CFI for competition cases.

Such a chamber could reduce the duration of cases as judges would develop a level of expertise which would enable them to handle competition cases more quickly.

3. JURISDICTION OF THE COMPETITION COURT

As stated above, UNICE shares the CBI's support for the creation of a new Competition Court to operate as a judicial panel of the CFI under Article 225a EC. In UNICE's view it could have jurisdiction to hear both antitrust and merger cases.

A Competition Court should also have the power to deal with procedural matters related to due process issues in Community competition proceedings.

The standard of judicial review should be the same as that currently conducted by the CFI.

4. COMPOSITION OF THE COMPETITION COURT

The judges to the Competition Court should in principle be selected and appointed in the same way as judges for other Community judicial panels. They should be independent and have the ability to be experts in competition law.

In addition, UNICE supports the *ad hoc* secondment of national competition judges to the Competition Court.

5. APPEALS FROM THE COMPETITION COURT

Decisions given by a judicial panel should be subject to appeal before the CFI on points of law only, as is currently the case with appeals from the CFI to the Court of Justice. Subsequent appeals from the CFI to the Court of Justice should only be made exceptionally when there is a serious risk of the unity or consistency of Community law being affected as provided by Article 225 (2) EC.

6. FUTURE ROLE OF THE CFI

The CFI, in addition to hearing other cases under its jurisdiction in first instance, would be the appeal court from the Competition Court. Considering its expertise in competition matters, the new Competition Court could be given the power to deal with preliminary questions on competition law from national courts (which are likely to increase in number following Regulation 1/2003), provided that these questions are limited to competition law issues.
