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BUSINESSEUROPE, the Confederation of European Business, **AIM**, the European Brands Association, and **MARQUES**, the Association of European Trade Mark Owners, call upon Member States to safeguard the interests of European business, and contribute to EU's innovation and competitiveness by **supporting the European Commission's communication on the financial perspectives of the Office for the Harmonisation in the Internal Market (OHIM)**¹.

Due to the popularity of the Community Trade Mark (CTM) and the efficiency of the OHIM, the OHIM has amassed a huge accumulated surplus: €199 million as at the end of 2006 (i.e. 104% of annual income, and projected to rise to 3 times annual income in 10 years). According to the CTM Regulation² OHIM is to be self-financing (from user fees) and with a balanced budget.

It is therefore contrary to EU law to allow such a surplus and to divert money to other EU budgets or to national trade mark offices.

The Commission's proposed solution is to amend the CTM Fees Regulation³ with a short-term measure to reduce certain fees and a long-term solution to permit regular fee adjustments (subject to the usual oversight by Member States via comitology).

Trade mark owners support the Commission's communication because this will in no way harm National Patent and Trade Mark Offices (NPTOs), which already enjoy excellent cooperation opportunities with the OHIM. It will be of particular benefit to SMEs. The surplus has been generated from fees paid by businesses so businesses should be the beneficiaries. A cost-effective CTM system will benefit EU competitiveness.

Certain EU Member States and NPTOs are resisting the proposed fee review mechanism and instead are calling for a comprehensive study on the functioning of the CTM system and a financial instrument allowing the accumulated surplus to be accessed by, inter alia, NPTOs.

The study could be interesting in principle, provided always that it examines the efficiency and functioning of the entire European trade mark systems – that is, all of the NPTOs as well as the OHIM. However, it should in no way be linked to the short-term reduction in fees and cannot be paid for from the OHIM surplus (for the reasons outlined above).

The delay in dealing properly with the OHIM's structural surpluses and the creation of a "mechanism for transferring money from OHIM to NPTOs" would be problematic for several reasons:

¹ COM (2006) 865

² 40/94, as amended

³ 2869/95, as amended

- **No need:** National trade mark offices already receive support from OHIM. In 2005 OHIM launched a programme offering funding to NPTOs but only a quarter has been used.
- **Efficiency:** This would not encourage efficiency within any office.
- **Financial control:** Lack of control over the use made of funds.
- **Hidden national taxation:** Because many NPTOs are not self-financing the distribution of OHIM funds to NPTOs would result in a diversion of funds to general national budgets.
- **Worrying precedent:** An efficient Community agency should not subsidise other national or EU budget lines.
- **Retrospective law:** Would fund diversion only apply to future surpluses?
- **No fees competition:** There is a false assumption that lower CTM fees will take business away from NPTOs. Users do not primarily choose between offices based on fee levels but on business need. Users want duality that means both efficient national offices and the CTM system.

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