



Mr José Manuel Barroso
President of the
European Commission
Rue de la Loi, 200
1049 Bruxelles

5 September 2007

Dear President Barroso,

RE : ACCESS TO JUSTICE

We are writing to express our members' concern about the availability of effective judicial remedies in the Community and seeking your support to bring about the necessary reforms.

The business concerns are centred on the present delays in the Court of First Instance (CFI). The most obvious delay is in reviewing merger decisions of the Commission which can range from just under 12 months to several years (the *Airtours* judgement took over three years to reach a final decision). This is not a realistic timetable for business which has the challenge of keeping a merger proposal alive and preventing the erosion of key benefits. The importance of mergers in restructuring European firms to become globally competitive hardly needs emphasising.

Apart from mergers, there are long delays in reaching decisions in other competition cases. The principles to be decided in these cases have a major impact on substantive issues, such as the licensing of technology, procedural matters and the right of defence as has been illustrated recently in the CFI's judgement on compensation in the *Schneider Legrand* case and the decision in the *de Beers* case.

DG Competition has stepped up its actions against cartels but the effectiveness of this enforcement is brought into question by the delays in hearing appeals at the CFI. New fining guidelines have recently been introduced which will result in a very considerable increase in fines. The impact of these and the validity of the guidelines will certainly be subject to judicial review but with the delays in the present system it will be years before there will be any legal certainty.



Much has been achieved over the last few years to enhance competition law, with the Modernisation Regulation 1/2003 and the reform of the EC Merger Regulation being the principal examples. The one area, which has hardly been touched, is the judicial review of Commission decisions.

A bottleneck in the EC court system has a knock-on effect on the whole European market. The legal uncertainty created by delays not only has a direct effect on the companies concerned but has an indirect effect on their market value and consequently their shareholders with a ripple effect on the whole economic system.

The CFI recently stated that it had the largest increase ever in the number of cases introduced to the Court in 2006. It was a rise of 33% in all the cases. This figure excludes staff cases, which since January 2006, are now heard in the new Civil Service Tribunal.

The evidence is clear that, 12 months later, off-loading the staff cases has not resulted in an overall reduction in the number of cases reaching the CFI.

The problem of increased workload was highlighted in the Report of the Working Party on the future of the EC court system as long ago as January 2000. Seven years later, a report from a Select Committee of the UK House of Lords has again pointed to the need for reform and made a number of recommendations.

On behalf of European business we would now urge the Commission to deal with this unmet need for reform. Effective judicial remedies underpin the whole structure of the Community and we feel they must be put in proper working order.

Yours faithfully,

Ernest-Antoine Seillière

Cc : Commissioner Kroes