
Editorial

Summer Reading for All

The House of Lords Select Committee on the European Communities has an excellent reputation for its studies of the Communities at work. There can be few other bodies which do this job so well. Its recent report (Session 1983–84, 18th Report, 220, HMSO £9.15) on the Commission's powers of investigation and inspection offers a wide-ranging and authoritative critique of the Commission's practices, particularly in competition cases.

The report concludes that while the Commission has in general used its powers in a way which is "competent and reasonable", its practices in the competition field can be improved. For example, when the Commission's inspector calls on a company, his authorisation is often so vague as to give his hosts little idea of what the investigation is about. The Committee proposes that the authorisation should specify the practices which the Commission wants to investigate and, if possible, the kind of papers which the inspector wishes to see. The authorisation should also explain the inspector's powers, his obligations of confidentiality and the company's rights of appeal and non-disclosure in the case of privileged documents. An authorisation to investigate should be preceded by the personal scrutiny of at

least one Commissioner or, if residential premises are to be searched, by the Commissioners collectively.

The Committee strongly recommends that legal professional privilege in competition cases (limited since *AM&S* to private practitioners) should be extended to in-house lawyers who are subject to strict and effective professional discipline — a view supported by the evidence of the Bar and the Law Society. More should be done to prevent confidential information obtained in investigations being disclosed to third parties, such as competitors and complainants. When an investigation has taken place, it may be years before the Commission tells the company the result. This practice, criticised by the CBI and the legal profession, can disrupt business planning. The Committee recommends that the Commission should tell the company within a year what's going on.

On the other hand, the Committee accepts that surprise visits by inspectors (the so-called dawn raids) are sometimes necessary and that the Commission's interpretation of its power to "examine . . . business records" as giving it in effect a right to search files and desks is "not unreasonable".

This report, which is based on the evidence of an impressive range of witnesses, including senior Commission officials, is careful and well-balanced. It merits serious study by the Commission.