

## Editorial

THE ENFORCEMENT OF competition policy is undoubtedly one of the "success stories" of the European Community. The report recently published by the Commission<sup>1</sup> shows that 1983 has been a year of vigorous and expanding activity. It has been difficult to apply the provisions of the Treaty of Rome, formulated in a period of economic expansion, to the present circumstances of depression, but the Commissioner responsible and the Director General for Competition have managed to do this successfully; and not only to bring competition policy into harmony with the general policy of the Community, but also to adapt it to the need for the elimination of protectionism and for positive efforts towards the restructuring of industry within the Community.

Articles 85 and 86 are being effectively enforced, with even heavier fines being imposed on offending enterprises. In 1983 the Commission took fifteen decisions under Article 85, one decision applying interim measures under Article 86 (later annulled by the Court of Justice), and five decisions under Article 66 of the ECSC Treaty. It has recently fined British Leyland 350,000 ECU for abusing a dominant position by attempting to deter British importers from buying new Metros on the cheaper continental market. And Saint Gobin and BSN have been fined 4m ECU for price-fixing and market-sharing in the flat glass industry.

At the same time the Commission is seeking to alleviate those firms with agreements capable of exemption under Article 85(3). New regulations have been introduced to deal with block exemptions in respect of exclusive distribution and exclusive purchasing agreements, and the long-awaited regulation for the exemption of certain patent licensing agreements has at last been concluded. Work is on hand for further regulations dealing with exemptions for research and development co-operation agreements, as well as motor vehicle distribution.

Greater attention is also being given to state aids, in which aids given by the member governments frequently have the result of supporting dying or uneconomic industries, and sometimes introducing a new form of protectionism. The Commission has already insisted on the "transparency" and notification of aids given to industry, and it has laid down a policy that aids should only be used for the restructuring of industry and for genuine innovation. It will therefore not be permitted where there is already over-capacity, as in the artificial fibre, clothing, and leather and footwear industries. In respect of steel, the Commission requires that further net capacity reductions must be carried out and that financial viability by the end of 1985 must be demonstrated. In 1983, twenty-one

<sup>1</sup> *Thirteenth Report on Competition Policy*, Commission of the European Communities, Brussels, 1984.

formal negative decisions were published, including nine from the steel sector.

With regard to procedure, the Commission is seeking to take fewer individual decisions and to rely more on group exemptions. An "accelerated procedure" is being introduced into the group exemption regulations where only one condition fails to be complied with, as well as in individual cases under Article 85(3) where there is no opposition. Greater use will also be made of administrative or "comfort" letters, indicating that the Commission has no interest in the agreement.

Explanatory notes are published in the report on the powers of Commission officials making inspections under Article 14 of Regulation No. 17, together with the terms of reference of the hearing officer appointed to conduct hearings of enterprises in the course of Commission proceedings against them. The latter contain little new that is not already contained in Regulation 99/63/EEC, and it is stated that the conduct of the proceedings is left to the hearing officer. As difficult issues sometimes arise, particularly when one or more complainants are heard at the same time as the enterprise attacked, it might be a convenience if some formal rules of procedure for the hearings were drawn up.

Finally, the Commission is anxious that there should be encouragement given to the member states to take enforcement action under Articles 85 and 86, which they are entitled to do unless proceedings have been commenced by the Commission, and to this end it is seeking to facilitate actions for damages in the national courts by persons who have been injured.