Editorial

Jacques WERNER

Calling the Tune

European countries for long laboured under the illusion that a strong market economy did not necessarily require a strong competition policy; they thought little of U.S. antitrust, which they considered dogmatic, and felt that they were able to maintain an appropriate balance between the political necessities of State aid and the exemption of various sectors of activities on one hand, and effective competition on the other.

The dynamic growth manifested in recent years by the European Communities has changed all this. Tough enforcement of competition law became viewed as the way in which to take down national barriers, integrate markets and stimulate economic growth, and the EC competition authorities tackled this task with quite unexpected vigour, attacking such sacred cows as State aid and well-protected service industries (airlines and telecommunications). Capping this came the Merger Control Regulation, which will in practice give the Commission a say in the important mergers on the world scene, even when the companies involved are both American, as in the recent case of AT&T and NCR: a role which, not so long ago, was the exclusive province of the U.S. antitrust authorities. A sharing of power—taking place, ironically, on the hundredth anniversary of the U.S. Sherman Act, the founding statute of modern competition law.

What confers an historical dimension to the present actions of the EC competition authorities is the return of the Eastern European countries to democracy and market economy. Together with the EFTA countries they are all candidates for, if not outright membership to, at least some form of an association with the EC. In order to stand a chance of succeeding they have, as from now, to put themselves in a position to respect the EC's *acquis communautaire*, and prominent among this, the competition rules. The EFTA countries are presently negotiating their joining the EC in a European Economic Area on this basis.

If the EC competition authorities have an opportunity of historic magnitude to shape competition policy throughout Europe, they face formidable obstacles as well. The first one, well-recognized by the Directorate General of Competition, is to ensure that the national authorities of the Member States will put themselves to effectively apply Articles 85 and 86 of the Treaty of Rome, thus alleviating the task of the

European Commission and allowing it to focus on the cases in which it has exclusive jurisdiction—the exemption of restrictive practices and the assessment of mergers with EC dimensions. If the national authorities do not take the application of EC competition law into their own hands, it will remain dead letter for large parts of EC economic life.

The second obstacle is to ensure that the EC antidumping mechanisms do not become, in the economic sense, the substitute for banned restrictive business practices. In our time of globalization of markets, European companies may have their most dangerous competitors as much, or even more, in the United States and South-East Asia, than in the Member States themselves. And whereas in the old days scared industrialists would have thought of forming defense cartels, they now find it more efficient and convenient, and of course legal, to complain to the Commission that their industry is injured, or threatened to be, and petition for the imposition of compensating duties on those damaging imports. This second obstacle is conceptually difficult to overcome, as the EC antidumping regulations correspond to independent industrial policy objectives. But if EC competition policy is to be true to its ultimate goal—ensuring the European consumers of the economic optimum produced by free and unhindered competition, irrespective of whether competitors are situated within or without the EC—it must come to bear down more heavily on EC antidumping policies.