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EU Commission report on functioning of Council Regulation 1/2003

The European Commission has disclosed its report on the experiences about the first five years of application of Council Regulation 1/2003 that brought about a landmark reform in EC competition law. According to the report the new procedural rules have reduced bureaucracy and allowed the Commission (the competition authority of the EU) to focus its resources on more serious competition concerns on a European-scale. By the establishment of the European Competition Network (ECN), a forum was created between the Member States' competition authorities and the Commission, which enables them to closely cooperate with each other in the course of a decentralised application of EC competition law. The report suggests further analysis of certain areas, which would further enhance effective functioning of the system.

On 30 April, one day before the 5th anniversary of the entry into force of Regulation 1/2003 on the reform of EC competition law procedural rules, the Commission disclosed its report on the experiences. The reform, which entered into force at the same time as the Enlargement 2004 of the EU, modernised more than 40 years of law enforcement, among others it put an end to the previous notification system, under which undertakings had the possibility to turn to the Commission for individual exemption relating to restrictive agreements; and decentralised to a large extent the application of EC competition antitrust rules.

Regulation 1/2003 required the preparation of the report in order to assess the experiences of the first five years. The report besides the experiences of the Commission is based on the practices of the MS competition authorities, and also on the replies and remarks made in questionnaires by stakeholders; the remarks were also analysed in a public consultation by the Commission.

According to the report, the abolition of the previous notification system is widely welcome by the stakeholders. In this respect the system change does not seem to have given rise to particular difficulties. The enforcement powers of the Commission have been largely improved by the abolition of the notification system and the enhanced investigation powers under Regulation 1/2003 (e.g. introduction of on spot inspections in non-business premises without any preliminary notification, or power to take statements). As a result of decentralised application of EC antitrust rules, during the period concerned, more than 1000 proceedings have been initiated for infringements of competition law by the MS competition authorities of the ECN (European Competition Network) created by the Commission and the national competition authorities. According to the report the coordination mechanism - preceding the decisions of the competition authorities and ensuring a consistent application of EC competition rules - has been smooth in practice. This mechanism has been used in more than 300 cases by the decision-makers of the MS competition authorities.

The report highlights some areas which merit further analysis in order to see whether the functioning of the system requires more refinement. Substantive law provisions of EC

competition law are applied according to national procedural rules and sanctioning systems by the MS competition authorities. Despite voluntary convergence manifested by the MS during the past five years, these areas show several national divergences, which were highlighted by the stakeholders in the course of the inquiries made with them.

The report leaves upon the question whether any amendment to the EC Regulation 1/2003 is required based on the experiences acquired so far. This question necessitates further evaluation.

The report can be found at:

<http://ec.europa.eu/competition/antitrust/legislation/regulations.html>.

For the time being the report is only available in English, German or French languages, but in a few weeks time it will be available in all languages of the EU.

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