EC/United States agreement: application of competition rules

1994/0236(CNS) - 13/08/2003

PURPOSE : to present the report from the Commission to the Council and the European Parliament on the application of the agreements between the European Communities and the Government of the United States of America regarding the application of their competition laws 1 January 2002 to 31 December 2002. CONTENT : the report states that during 2002, the Commission continued its close cooperation with the Antitrust Division of the US Department of Justice (DoJ) and the US Federal Trade Commission (FTC). Contact between Commission officials and their counterparts at the two US agencies was frequent and intense. These contacts range from detailed case-related discussions to more general, sometimes theoretical, competition policy-related matters. Case related contacts usually take the form of regular telephone calls, e-mails, exchanges of documents, and other contacts between the case teams. High-level meetings and contacts also occur with reasonable frequency. The cooperation continues to be of considerable mutual benefit to both sides, in terms of enhancing the respective enforcement activity, avoiding unnecessary conflicts or inconsistencies between those enforcement activities, and in terms of better understanding each other's competition policy regimes. As far as merger cases are concerned, the report shows that in line with the overall economic climate the number of transnational mergers decreased in the year 2002. Nevertheless, the year 2002 saw a continued good cooperation in those transactions notified to both the Commission and the US antitrust agencies. Concerning non-merger cases, during the course of the year there was also frequent contacts in a number of non-merger cases. In the Microsoft case, the Commission and the US DoJ kept each other informed about the status of their respective investigations. Bilateral cooperation between the Commission and the US DoJ was particularly intensified in cartel cases: numerous contacts took place between officials of the Commission's cartel units and their counterparts at the DoJ. The exchanges of information on particular cases, within the limits of the existing provisions on confidentiality, were most frequent, but discussions also concerned policy issues. There were 15 Commission investigations for which effective co-operation took place. Most contacts were established via telephone and e-mail, but in some instances meetings were held. Many of the case related contacts took place as a result of simultaneous applications for immunity in the US and the EC. Furthermore, in a number of instances, co-ordinated enforcement actions took place in the US and the European Union, whereby the agencies tried to ensure that the time lapse between the start of the respective actions was as short as possible. Moreover, there were numerous high-level bilateral contacts between the Commission and the relevant US authorities during the course of 2002. On 23 July 2002 Commissioner Mario Monti met in Brussels the heads of the US and antitrust agencies, Assistant Attorney General Charles James, and Chairman Timothy Muris of the Federal Trade Commission for the annual bilateral EU/US meeting. As regards EU/US Working Groups, these continued. The activities of the existing EU/US Mergers Working Group were expanded and work intensified. DG COMP agreed with the US agencies that the Working Group should consist of a number of sub-groups. One sub-group has been dealing with procedural issues and two othersub-groups with substantive issues (one with conglomerate aspects of mergers, and another with the role of efficiencies in merger control analysis). The fruitful discussion on remedies also continued. Work in the sub-group dealing with efficiencies in merger control is still in progress. The objective of the sub-group on efficiencies is to discuss the consideration to be given to efficiencies in merger control analysis. Work in the sub-group commenced in August 2002, and was ongoing at the end of 2002. As regards best practices on EU/US cooperation in merger cases, these put in place a more structured basis for co-operation in reviews of individual merger cases. The best practices recognise that cooperation is most effective when the investigation timetables of the reviewing agencies run more or less in parallel. Merging companies will therefore be offered the possibility of meeting at an early stage with the agencies to discuss timing issues. Companies are also encouraged to permit the agencies to exchange information which they have submitted during the course of an investigation and, where appropriate, to allow joint EU/US interviews of the companies concerned. The

practices moreover designate key points in the respective EU and US merger investigations when it may be appropriate for direct contacts to occur between senior officials on both sides. The report highlights that there was a total of 63 formal notifications made by the Commission during the period between 1 January 2002 and 31 December 2002. The Commission received a total of 44 formal notifications from the US authorities during the same period. Merger cases made up the majority of all notifications in both directions. There were 56 merger notifications made by the Commission and 27 by the US authorities. In conclusion, 2002 witnessed a further intensification of EU/US cooperation in all areas of competition law enforcement. The further increase of cooperation in 2002 with respect to the combating of global cartels is noteworthy, also the authorities on the two sides of the Atlantic are taking increasingly convergent approaches to the identification and implementation of remedies, and to post-merger remedy compliance monitoring. The Commission, DoJ and FTC also continued to maintain an ongoing dialogue on general competition policy/enforcement issues of common concern.