An overview of EC Regulation 1/2003 as the new implementing regulation for the rules on competition laid down in Articles 81 and 82 of the EC Treaty

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Introduction

- Consider competition environment
- Review Regulation 17/62
- Summarise competition “modernisation”
- Describe Regulation 1/2003
- Examine Regulation 1/2003 comments and impacts from UK perspective
Competition – environment

• Structure of the environment
  – EC Treaty VI(1): Article 81 and 82 + Article 83
  – Article 81 is an “abstract” two-stage filter
  – DG COMP “manages” community competition

• Changes in the environment (1962 → 2004)
  – Member states: 6 → 25
  – Competition Law:
    • Community: undeveloped → developed
    • Member states: none/disparate → aligned (e.g. UK)
Regulation 17/62 - defined

- Individual clearance / exemption
- Powers of investigation reactive/proactive
- Powers of enforcement upon infringements
- Liaison with member states (limited)
- Procedural diligence and due process
Regulation 17/62 - refined

- Confidentiality/privilege for information
- Wider range of remedial actions
- Right of access to Commission files
- Limited decentralisation to Member States
- Increased scoping and guidance
Regulation 17/62 - issues

• Commission:
  – monopoly on Article 81(3) restricts scalability
  – unable to concentrate on serious issues

• Business community:
  – cost of compliance is too high
  – conflicts of interest in Commission’s approach
  – lack of legacy certainty (non-binding comfort letters)
  – delay for formal decisions is excessive
Modernisation

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>October 1998</td>
<td>Modernisation announced</td>
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<tr>
<td>April 1999</td>
<td>White paper published</td>
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<tr>
<td>September 2000</td>
<td>Regulation proposed</td>
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<tr>
<td>December 2002</td>
<td>Regulation adopted</td>
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<tr>
<td>May 2004</td>
<td>Regulation applicable</td>
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Regulation 1/2003 - briefly (1)

• “Maintenance” changes
  – more clearly organised and explicit
  – replace Regulation 17/62 & 141/62
  – consolidate transport sector Regulations
  – incorporate Regulation 17/62 refinements
  – address Regulation 17/62 issues
Regulation 1/2003 - briefly (2)

• Modernisation changes
  – abolish individual notification / exemption / clearance: but right to revoke remains
  – devolve power: a “competition network”, with community/national cooperation
  – harmonise processes (with ECMR)

• Applicable from 1 May 2004
Regulation 1/2003 - defined (1)

• Fundamental principles (I)

• Powers of enforcement between community and national levels (II)

• Powers to make decisions regarding infringements (III)

• Process of cooperation between community and national levels (IV)
Regulation 1/2003 - defined (2)

- Powers of investigation reactive/proactive (V)
- Powers to impose penalties subject to limitations (VI) (VII)
- Powers to individually withdraw 81(3) exemption (IX)
- Procedural diligence and due process (VIII) (X)
Regulation 1/2003 - issues (1)

• Relating to Member State devolution
  – variability of national implementation:
    • per se, and from different systems/rules (e.g. evidence) → leads to “forum shopping”
    – uncertain meaning of the “effect on trade”
    – inexperience of national courts, and even national competition authorities
  – re-nationalisation of competition policy
Regulation 1/2003 - issues (2)

- Guidance, review and refinement
  - Guidelines for case allocation and “effect on trade”
  - Review after 5 years of application

- UK compatibility
  - “harmonised” Competition Act 1998, but to be amended in as yet undetermined way
  - DTI and OFT happy, judiciary maybe not
Regulation 1/2003 - impacts

• Business community: lower costs, self-assessment, increased uncertainty (now)
• Courts: increased CFI/ECJ load
• Commission: better focus, clearer leadership, but limitations imposed
• Member States: “transition” uncertainties, more effective enforcement, harmony
References

• Detailed paper for this presentation
  http://matthewgream.net/content/overview_ec-reg-1-2003_paper.doc

• Regulation 1/2003 as adopted (EUR-Lex)

• Modernisation process (DG COMP)
  http://europa.eu.int/comm/competition/antitrust/others