

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

October 1998	Modernisation announced
April 1999	White paper published
September 2000	Regulation proposed
December 2002	Regulation adopted
May 2004	Regulation applicable

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)
http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_001/l_00120030104en00010025.pdf
- Modernisation process (DG COMP)
<http://europa.eu.int/comm/competition/antitrust/others>