



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.09.2002
COM(2002) 505 final

**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
and the Government of Canada
regarding the application of their competition laws**

1 January 2001 to 31 December 2001

1. UNITED STATES

1.1. Introduction

On 23.09.1991 the Commission concluded an Agreement with the Government of the United States of America regarding the application of their competition laws¹ (the "1991 Agreement"), the aim of which is to promote co-operation between the competition authorities. By a joint decision of the Council and the Commission on 10.04.1995² the Agreement was approved and declared applicable from the date it was signed by the Commission.

On 04.06.1998 another agreement, which strengthens the positive comity provisions of the 1991 Agreement, entered into force³ (the "1998 Agreement"), after having been approved by a joint decision of the Council and the Commission of 29.05.1998.

On 08.10.1996 the Commission adopted the first report on the application of the 1991 Agreement for the period of 10.04.1995 to 30.06.1996⁴. The second report completes the 1996 calendar year, covering the period of 01.07.1996 to 31.12.1996⁵. The third report covers the whole calendar year 1997⁶, the fourth the year 1998⁷, the fifth the year 1999⁸ and the sixth the year 2000⁹. The current report concerns the calendar year from the 01.01.2001 to 31.12.2001. This report should be read in conjunction with the first report which sets out in detail the benefits, but also the limitations of this kind of co-operation.

In summary, the 1991 Agreement provides for:

- notification of cases being handled by the competition authorities of one Party, to the extent that these cases concern the important interests of the other Party (Article II), and exchange of information on general matters relating to the implementation of the competition rules (Article III);
- co-operation and co-ordination of the actions of both Parties' competition authorities (Article IV);
- a "traditional comity" procedure by virtue of which each Party undertakes to take into account the important interests of the other Party when it takes measures to enforce its competition rules (Article VI);

¹ *Agreement between the Government of the United States of America and the Commission of the European Communities regarding the application of their competition laws* (OJ L 95, 27.4.1995, pp. 47 and 50)

² See OJ L 95, 27.4.1995, pp.45 and 46.

³ Agreement between the European Communities and the Government of the United States of America on the application of positive comity principles in the enforcement of their competition laws, OJ L 173, 18.6.1998, pp. 26–31.

⁴ Com(96) 479 final, see XXVIth Report on Competition Policy, pp. 299-311.

⁵ Com(97) 346 final, see XXVIth Report on Competition Policy, pp. 312-318.

⁶ Com(98) 510 final, see XXVIIth Report on Competition Policy, pp. 317-327.

⁷ Com(1999) 439 final, see XXVIIIth Report on Competition Policy, pp. 313-328.

⁸ Com(2000) 618 final, see XXIXth Report on Competition Policy, pp. 319-332.

⁹ Com(2002)45 final, see XXXth Report on Competition Policy, pp. 291-307.

- a "positive comity" procedure by virtue of which either Party can invite the other Party to take, on the basis of the latter's legislation, appropriate measures regarding anti-competitive behaviour implemented on its territory and which affects the important interests of the requesting Party (Article V).

In addition, the 1991 Agreement makes it clear that none of its provisions may be interpreted in a manner which is inconsistent with legislation in force in the European Union and the United States of America (Article IX). In particular, the competition authorities remain bound by their internal rules regarding the protection of the confidentiality of information gathered by them during their respective investigations (Article VIII).

The 1998 Agreement clarifies both the mechanics of the positive comity co-operation instrument, and the circumstances in which it can be availed of. In particular, it describes the conditions under which the requesting Party should normally suspend its own enforcement actions and make a referral.

1.2. EU/US cooperation during 2001

During 2001, the Commission continued its close cooperation with the Antitrust Division of the US Department of Justice (DoJ) and the US Federal Trade Commission (FTC) in an ever greater number of cases. Indeed, contact between Commission officials and their counterparts at the two US agencies is showing a marked increase in frequency. 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.

1.2.1. Merger cases

The trend towards the globalisation of markets continued apace during the year, as most vividly illustrated by the record number and scale of transnational mergers: the year 2001 saw a continued large number of transactions notified to both the Commission and the US antitrust agencies. With regard to the investigation of these proposed mergers, staff-level contacts between DG Competition's Merger Task Force, on the one hand, and the US DoJ and FTC, on the other, take place virtually on a daily basis. Cooperation is most effective where the parties involved agree to permit the EU and US authorities to share the information they provide by means of a waiver. This now frequently occurs.

In the *Metso/Svedala* case, which concerned rockcrushing equipment, the Commission and the FTC fully and intensely cooperated not only with respect to the substantive assessment of the case but also to the suitability of the remedies. The operation was finally approved by both authorities subject to undertakings. Likewise, in the *Nestle/Ralston Purina* case, which concerned pet food, the Commission and the FTC closely cooperated during the negotiations of remedies. In the *CVC/Lenzing* case the Commission and the FTC remained in close and mutually beneficial contact all along the procedure by sharing information, and by discussing and developing consistent analysis of the main substantive issues. After the Commission had prohibited the operation, the FTC closed its file. In the *GE/Honeywell* case the operation was finally approved by the DoJ and prohibited by the Commission. Although the Commission reached a divergent outcome from that of the US DoJ, this did not result from a lack of

transatlantic cooperation. Indeed, cooperation between the Commission and the DoJ was very intense and started early in the process, that is well ahead of the actual notification of the transaction to the Commission.

1.2.2. *Non-merger cases*

During the course of the year, there has been a notable increased level of contact between the Commission and the US antitrust agencies in non-merger cases, in particular in cartel cases. About eleven cartel investigations that both the Commission and the US DoJ had been investigating were discussed between the two agencies. Most contacts were established via telephone and e-mail. In certain cases visits took place. In the *Fine Art Auction Houses* case cooperation between the agencies was productive. It led, amongst others, to a coordinated timing of the investigatory steps of both agencies. This had to do, amongst others, with the criminal investigation and trial before the District Court of the Southern District of New York, against former Sotheby's chairman Taubman. Also, one company involved provided a waiver, which permitted the two agencies to exchange views regarding confidential evidence. The Commission's investigation had not yet been concluded at the end of 2001. Also in other cases the DoJ and the Commission were able to coordinate their investigations e.g. the timing of surprise inspections at the companies concerned.

1.3. **Administrative Arrangements on Attendance (AAA)**

The Commission adopted on March 31, 1999 a text setting forth administrative arrangements between the competition authorities of the European Communities and of the United States concerning reciprocal attendance at certain stages of the procedures in individual cases involving the application of their respective competition rules¹⁰. These arrangements were concluded in the framework of the agreements between the European Communities and the government of the United States concerning enforcement of their competition rules, and in particular the provisions regarding co-ordination of enforcement activities. In May of 2001, representatives from the US DoJ attended the oral hearing in the *GE/Honeywell* case.

1.4. **EU/US Mergers Working Group**

The work of the joint EU/US Mergers Working Group has continued. During the course of 2001, there were extensive tri-partite (Commission/DoJ/FTC) discussions, including a number of tele/video-conferences. At the occasion of the bilateral meeting of 24 September 2001 it was decided to expand and to intensify the activities of the working group.

1.5. **High-level contacts**

There were numerous high-level bilateral contacts between the Commission and the relevant US authorities during the course of 2001: Commissioner Monti paid a visit to Washington in March, and used the occasion to meet inter alia with key members of the Administration. On the 24 September Commissioner Mario Monti met in Washington the newly appointed heads of the US antitrust agencies, Assistant Attorney General Charles James of the Antitrust Division of the DoJ and Chairman Timothy Muris of the FTC for the annual bilateral EU/US meeting. The meeting coincided with the 10th anniversary of the EU-US bilateral agreement on competition policy. Meetings also took place during the course of the year between the Commission and other US agencies, e.g., the US Department of Transportation (which has some responsibility for the management of competition policy issues).

¹⁰ Bulletin EU 3-1999, Competition (18/43); 1999 Report COM(2000) 618 final, p. 5.

1.6. Statistical information

a) Number of cases notified by the Commission and by the US authorities

There was a total of 84 formal notifications made by the Commission during the period between 1 January 2001 and 31 December 2001. The cases are divided into merger and non-merger cases and are listed in **Annex 1**.

The Commission received a total of 37 formal notifications from the US authorities during the same period. A list of these cases is found in **Annex 2**, again broken down into merger and non-merger cases.

Merger cases made up the majority of all notifications in both directions. There were 71 merger notifications made by the Commission and 25 by the US authorities.

The figures given represent the number of cases in which one (or more) notifications took place and not the total number of individual notifications. Under Article II of the Agreement, notifications may be made at various stages of the procedure and so more than one notification may be made concerning the same case.

b) Notifications by the Commission to Member States

The text of the interpretative letter sent by the European Communities to the US as well as the Statement on Transparency made by the Commission to the Council on 10 April 1995, provides that the Commission, after notice to the US Competition authorities, will inform the Member State or Member States, whose interests are affected, of the notifications sent to it by the US antitrust authorities. Thus, when notifications are received from the US authorities, they are forwarded immediately to the relevant sections in DG Competition and at the same time copies are sent to the Member States, if any, whose interests are affected. Equally, at the same time that DG Competition makes notifications to the US authorities, copies are sent to the Member State(s) whose interests are affected.

1.7. Conclusions

2001 witnessed a further intensification of EU/US cooperation in all areas of competition law enforcement. 2001 saw a record number of merger transactions notified both to the Commission and the US authorities.. The increase of cooperation in 2001 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.

2. CANADA

2.1. Introduction

The EU/Canada Competition Co-operation Agreement¹¹ is designed to facilitate cooperation between the European Communities and Canada with respect to the enforcement of their respective competition rules. The agreement was signed at the EU/Canada Summit in Bonn on 17 June 1999 and entered into force at signature.

The Agreement provides for, among other things: (i) reciprocal notification of enforcement activities by either competition authority, where such activities may affect the important interests of the other party; (ii) one competition authority rendering assistance to the competition authority of the other party in its enforcement activities; (iii) coordination by the two authorities of their enforcement activities; (iv) requests by a party that the competition authority of the other party take enforcement action (positive comity); (v) one party to take into account the important interests of the other party in the course of its enforcement activities (traditional comity); and (vi) the exchange of information between the parties, subject to applicable domestic laws to protect confidential information. The report on cooperation between 17 June 1999 and 31 December 2000 was published together with the sixth report on cooperation with the United States.¹² The current report concerns the calendar year from 1 January 2001 to 31 December 2001.

2.2. Cooperation

An increasing number of cases is being examined by the competition authorities on both sides resulting in increased and enhanced cooperation. Contacts between the Commission and the Canadian Competition Bureau have been frequent and fruitful. Discussions have concerned both case related issues, and more general policy issues. Case related contacts usually take the form of telephone calls, e-mails, exchanges of documents, and other contacts between the case teams. Case related contacts comprised all areas of competition law enforcement. Merger cases included *GE/Honeywell* and *Nestle/Ralston Purina* and *Bayer Aventis*. There was a notable increase in cooperation in cartel cases, about eight cartel investigations that both the Commission and the Canadian Competition Bureau were dealing with were discussed between the two authorities.

Policy related issues were discussed at the occasion of visits and through video conferences. Two bilateral meetings, as foreseen in the Cooperation Agreement, took place in February 2001 in Brussels and September 2001 in Ottawa at which the heads of the respective competition authorities participated. In addition, the merger and cartel units from the respective authorities met to discuss issues specific to their areas of enforcement.

¹¹ Agreement between the European Communities and the Government of Canada regarding the application of the competition laws OJ L 175, 10.7.1999, p. 50

¹² Com(2001)45 final, see XXXth Report on Competition Policy, pp. 291-307.

2.3. Statistical information

a) *Number of cases notified by the Commission and by the Canadian Competition Bureau*

There was a total of 8 formal notifications made by the Commission during the period between 1 January 2001 and 31 December 2001 (**Annex 3**). The Commission received 10 formal notifications from the Canadian Competition Bureau (CCB) in 2001 (**Annex 4**).

b) *Notifications by the Commission to Member States*

As foreseen in the agreement, the Commission has informed the Member State or Member States, whose interests are affected, of the notifications sent to it by the Canadian Competition Bureau. Thus, when notifications are received from the Competition Bureau, they are forwarded immediately to the relevant sections in DG Competition and at the same time copies are sent to the Member States, if any, whose interests are affected. Equally, at the same time that DG Competition makes notifications to the Competition Bureau, copies are sent to the Member State(s) whose interests are affected.

2.4. Conclusion

The Agreement has led to a closer relationship between the Commission and the Canadian Competition Bureau, as well as to a greater understanding of each other's competition policy. An increasing number of cases are being examined by both competition authorities, and there is consequently a growing recognition of the importance, on the one hand, of avoiding conflicting decisions and, on the other, of coordinating enforcement activities to the extent that this is considered mutually beneficial by both parties. The increase of cooperation in 2001 with respect to the combating of global cartels is also noteworthy. The Commission and the Canadian Competition Bureau also continued to maintain an ongoing dialogue on general competition policy/enforcement issues of common concern.

ANNEX 1¹³

Notification by the European Commission to the US Authorities

01.01.2001 –31.12.2001

Merger cases:

01	Case n° COMP/ M.2291	VNU/ACNielsen
02	Case n° COMP/ M.2256	Philips/Agilent
03	Case n° COMP/ M.2211	Universal Studio Networks/NTL/Studio Channel
04	Case n° COMP/ M.2271	Cargill/Agribrands
05	Case n° COMP/ M.2306	Berkshire Hathaway/Johns Manville
06	Case n° COMP/ M.2312	Abbott/BASF
07	Case n° COMP/ M.2324	Sanmina Corp.
08	Case n° COMP/ M.2208	Chevron/Texaco
09	Case n° COMP/ M.2302	Heinz/CSM
10	Case n° COMP/ M.2292	AEA Investors/DLJMB Funding III/BF Goodrich
11	Case n° COMP/ M.2220	General Electric/Honeywell
12	Case n° COMP/ M.2330	Cargill/Banks
13	Case n° COMP/ M.1976	Shell/Halliburton/Welldynamics
14	Case n° COMP/ M.2079	Raytheon/Thales
15	Case n° COMP/ M.2227	Goldman Sachs/Messer Griesheim
16	Case n° COMP/ M.2308	Northrop Grumman/Litton Industries
17	Case n° COMP/ M.2275	PepsiCo/Quaker
18	Case n° COMP/ M.2365	Schlumberger/Sema
19	Case n° COMP/ M.2355	Dow Chemicals/Enichem Polyurethanes
20	Case n° COMP/ M.2350	Campbell/ECBB (Unilever)

¹³ Due to confidentiality requirements or to protect the secrecy of ongoing investigations, this list names only those investigations or cases which have been made public

21	Case n° COMP/ M.2231	Huntsmann International/Albright & Wilson
22	Case n° COMP/ M.2375	PAI + UGI/Elf Antargaz
23	Case n° COMP/ M.2328	Shell/Beacon/3i/Twister
24	Case n° COMP/ M.2222	UGC/Liberty Media
25	Case n° COMP/ M.2394	SCI Systems/Nokia Networks
26	Case n° COMP/ M.2435	Electronic Data Systems Corp/Systematics AG
27	Case n° COMP/ M.2424	TYCO/CIT
28	Case n° COMP/ M.2405	Dow Chemical Company/Ascot plc
29	Case n° COMP/ M.2359	International Fuel Cells/SOPC (Shell)
30	Case n° COMP/ M.2466	Sodexo/Abela(II)
31	Case n° COMP/ M.2190	LSG/OFSI
32	Case n° COMP/ M.2421	Continental/Temic
33	Case n° COMP/ M.2460	IBM/Informix
34	Case n° COMP/ M.2415	Interpublic/True North
35	Case n° COMP/ M.2449	Goldman Sachs/SJPC/SCP
36	Case n° COMP/ M.2461	OM Group/DMC
37	Case n° COMP/ M.2439	Hitachi/STMicroelectronics/SuperH/JV
38	Case n° COMP/ M.2489	Borg Warner/Hitachi
39	Case n° COMP/ M.2337	Nestlé/Ralston Purina
40	Case n° COMP/ M.2480	Thomson/Carlton/JV
41	Case n° COMP/ M.2531	SARA LEE / EARTHGRAINS
42	Case n° COMP/ M.2534	SCI Systems/Nokia Networks
43	Case n° COMP/ M.2517	Bristol-Myers Squibb/Du Pont
44	Case n° COMP/ M.2509	Dow/Reichhold/JV
45	Case n° COMP/ M.2575	LIBERTY MUTUAL/GRUPO RSA ESPANA
46	Case n° COMP/ M.2510	Cendant / Galileo
47	Case n° COMP/ M.2510	Re-Notification - Cendant / Galileo

48	Case n° COMP/ M.2571	Johnson Controls/Sagem
49	Case n° COMP/ M.2549	SANMINA/SIC SYSTEMS
50	Case n° COMP/ M.2560	APAX Europe V – A.L.P. Delaware (USA) Mannesmann Plastics Machinery AG, Krauss-Maffei Corp., Van Dorn Demag Corp., Krauss-Maffei France, Netstal Maschinen AG
51	Case n° COMP/ M.2526	GE Insurance Holdings/National Mutual Life
52	Case n° COMP/ M.2559	USG/Deutsche Perlite
53	Case n° COMP/ M.2505	Tyco / CR Bard
54	Case n° COMP/ M.2584	Tyco/Sensormatic
55	Case n° COMP/ M.2566	Shell-Cinergy / EDA / EPA / JV
56	Case n° COMP/ M.2507	Xchange/BAE Systems/Procur
57	Case n° COMP/ M.2572	Time UK Publishing Holdings Ltd/IPC Group Ltd
58	Case n° COMP/ M.2648	KPNQWEST / GLOBAL TELESYSTEMS
59	Case n° COMP/ M.2276	The Coca-Cola Company/Nestlé/JV
60	Case n° COMP/ M.2562	Bertelsmann/France Loisirs
61	Case n° COMP/ M.2651	AT&T/Concert
62	Case n° COMP/ M.2667	Utilicorp/DB Australia/Midlands Electricity/JV
63	Case n° COMP/ M.2643	Blackstone / CDPQ / DeTeKS BW
64	Case n° COMP/ M.2652	Blackstone / CDPQ / DeTeKS NRW
65	Case n° COMP/ M.2656	Cinven / Klöckner
66	Case n° COMP/ M.2613	ALCOA / BHP / BILLITON / JV
67	Case n° COMP/ M.2502	CARGILL / CERESTAR
68	Case n° COMP/ M.2627	Otto Versand / Sabre / Travelocity JV
69	Case n° COMP/ M.2642	BT/Concert
70	Case n° COMP/ M.2637	NUTRICIA/BAXTER/2.HSC
71	Case n° COMP/ M.2666	Berkshire Hathaway/Fruit of the loom

Non_merger cases

01			request for information
02			request for information
03			request for information
04			request for information
05	Case n° COMP/ 38.102		PO/NSI-VeriSign Registry
06	Case n° COMP/ 38.064/F		Covisint
07			request for information
08			request for information
09	Case n° COMP/ 37.926		Sun Microsystems/ETSI
10	Case n° COMP/ 36.213/F2		GEAE+P&W
11			request for information
12	*	*	*
13	*	*	*

ANNEX 2

Notification by the US Authorities to the European Commission

01.01.2001 –31.12.2001

Merger cases:

- 01 Philips/Agilent
- 02 Svedala/Metso
- 03 Quaker Oats/PepsiCo
- 04 Baker Holding/Lhoist
- 05 GlaxoSmithKline
- 06 Eastern Lime Holding/Blue Circle Ind
- 07 Ralston Purina/Nestlé
- 08 Svedala/Metso
- 09 France Telecom/Equant
- 10 Chevron/Texaco
- 11 General Electric/Honeywell
- 12 Phillips/Marconi
- 13 Cargill/Cerester
- 14 Seagram/Pernod/Diageo
- 15 Stoess/Leiner Davis Gelatin
- 16 Weston/Unilever
- 17 National Dairy Holdings/Marigold
- 18 3D Systems Corporation
- 19 National Dairy Holdings/Crowley Foods, Inc.
- 20 Blue Circle Industries/Lafarge
- 21 Reuters Group/Bridge

- 22 Acordis/Lenzing/CVC European Eq. Partners II
- 23 DGF STOESS
- 24 Dow Chemical Company/Rechhold
- 25 Acordis/Lenzing/CVC European Eq. Partners II

Non merger cases¹⁴

- 01 Delta Airlines/Air France
- 02 Anchor (carbon cathode block)
- 03 *
- 04 USAid waterworks projects (Criminal Fine)
- 05 *
- 06 (Monochloacetic) Akzo Nobel
- 07 Powder River Basin Coal
- 08 *
- 09 *
- 10 *
- 11 *
- 12 *

¹⁴ Due to confidentiality requirements or to protect the secrecy of ongoing investigations, this list names only those investigations or cases which have been made public

ANNEX 3¹⁵

Notification by the European Commission to the Canadian Authorities

01.01.2001 –31.12.2001

01	Case n° COMP/ M.2268	Pernod Ricard/Diageo/Seagram Spirits
02	Case n° COMP/ M.2279	Nortel/Mundinteractivos/Broad Media
03		request for information
04	Case n° COMP/ M.2493	Norske Skog/Abitibi/Papco
05	Case n° COMP/ M.2518	GfE/SHELL HYDROGEN/HQC
06	Case n° COMP/ *	*
07		request for information
08	Case n° COMP/ M.2643	Blackstone / CDPQ / DeTeKS BW
09	Case n° COMP/ M.2652	Blackstone / CDPQ / DeTeKS NRW

¹⁵ Due to confidentiality requirements or to protect the secrecy of ongoing investigations, this list names only those investigations or cases which have been made public

ANNEX 4

Notification by the Canadian Authorities to the European Commission

01.01.2001 –31.12.2001

- 01 Graphite & Carbon Products
- 02 Supply and Service of Post-tensioning Systems to the Hibernia Platform
- 03 Graphite & Carbon Products
- 04 General Electric/Honeywell
- 05 Bulk vitamins and Related Products
- 06 Carbon & Graphite Products
- 07 Carbon & Graphite Products
- 08 Bulk vitamins and Related Products
- 09 *