

EU Modernisation: Making it work in the UK.

Oxford Competition Policy
Conference

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DTI's Aim

- “Prosperity for All”
 - Innovation
 - Enterprise
 - Fair Markets
- Among the best in the world by 2006
 - Empowered consumers
 - Protection of consumers
 - Effective competition regime
- Working with others

Four Building Blocks

- Competition Act 1998
- Enterprise Act 2002
- Modernisation
- New Merger Regime

Key Changes

- Prohibition System for CA'98
- SLC Test for mergers
- Targetting Markets
- Criminalisation of Cartels
- Independent Competition Bodies

Context and Principles

- Significant Institutional Change
- Align CA '98 where possible
- Reduce potential burden on
 - business
 - regulators
- Ensure clarity: guidance

DTI's Role

- Designate NCAs and National Courts.
- Lay down procedures for UK NCAs investigating under Articles 81/82.
- Specify penalties under Articles 81/82.
- Specify how additional remedies will operate.
- Provide for appeals under Articles 81/82.

Process of Implementation

- Friends Group
- Practitioners Workshops
- Meetings with Business and Legal representatives
- 2 Formal Consultations
- Draft Statutory Instrument

The Government's proposals 1

- **Notifications:** the domestic notification system should be removed and NCAs might operate an extra-statutory system of written “Opinions” for cases which present novel or unresolved points of law.
- **Response:** Yes

The Government's proposals 2

- **Investigations:** entry to domestic premises should be by warrant in every instance and our NCAs should be given the express power to seal premises under both Art 81/82 and the Competition Act.
- **Response:** Yes

The Government's proposals 3

- **Penalties:** maximum penalty for breaches of Art 81/82 or the Competition Act should be aligned.
- **Response:** Yes: alignment with Commission Penalties

The Government's proposals 4

- **Remedies:** new power for OFT to accept commitments under Ch I/II and interim measures dealt under Arts 81/82 in the same way as they currently are in our national law.
- **Response:** Yes

The Government's proposals 5

- **Exclusions:** principle of equal treatment of agreements under both legal frameworks.
- **To retain** - exclusions where minimal risk of EC law applying or where domestic exclusion tracks one in EC law.
- **To remove** - exclusions which differ in scope from a similar exclusion at EC level or where no EC equivalent exists.

The Government's proposals 6

To remove:

- the Exclusion Order for vertical agreements.
- the competition scrutiny regime in the Companies Act for bodies “recognised” as qualifying or supervisory bodies.

The Government's proposals 7

To remove:

- Power to create Producer Responsibility Schemes.
- agreements given clearance under the Restrictive Trade Practices Act 1976.

Making it work in Europe

- ECN
- Guidance
- Case allocation
- Continuing Evaluation

ECN

- Intranet: NCAs from 25 countries plus Cision.
 - good co-operation and collaboration
- Working Groups
 - allocation of cases
 - information exchange
 - joint investigations
 - leniency
 - IT infrastructure
- Internal Co-operation Manual

Guidance

Commission Notices

- network of competition authorities
- concept of effect on inter-state trade
- co-operation with national courts
- interpretation of Article 81(3)
- written opinions
- treatment of complaints

Case Allocation

- Authority best placed to act
 - location of anti-competitive effects
 - location of evidence
 - effect of intervention
- One stop shop as often as possible
- Commission take where
 - Community interest or other Community provisions
 - MS not agreed or more than 3 substantively affected.
- MS fine for effects in another MS where possible

Timetable

- 27th June – First Consultation Period Ends
- 12th August – Exclusions Consultation Period ends
- 30th September – Publish Outcome
- Autumn – Public Draft Statutory Instrument (SI)
- December – SI to Parliament
- 1st May 2004 – SI and Regulation in force

Some Challenges

- An effective network?
- Soft Harmonisation?
 - Penalties
 - Leniency
- Prioritisation?