

BELGIUM*(2000)***Summary****I. New legislation and proposed reforms**

1. During the year 2000, there were no new provisions involving competition law and related matters, neither were there proposed amendments to the current legislation.

II. Implementation of competition law and policy**1. Summary of the activity of the Competition Service and the Corps of rapporteurs**

2. The amendments to the Belgian Competition Act (incorporated into the Act on protection of economic competition, co-ordinated on 1 July 1999) which entered into force in 1999 have caused some changes within the Competition Service. The amendments have established a Corps of rapporteurs near to the Service whose members are responsible for heading and organising investigations and preparing and submitting investigative reports to the Competition Council.

3. Pending recruitment of permanent rapporteurs by competitive examination, two acting rapporteurs have been appointed among the staff of the Service until the definitive appointments.

4. During the second half of the year 2000, 17 new permanent staff members have joined the Service. The formation and education of this new staff is a priority.

5. With respect to anti-competitive practises, the Corps of rapporteurs submitted three investigative reports to the Competition Council Chairman concerning a request for interim measures.

6. As to concentrations, the Corps of rapporteurs submitted 42 investigative reports to the Council. In respect of one notified merger, a Phase II investigation was carried out. Furthermore, the corps of rapporteurs submitted one investigative report following investigations carried out at the request of the Council with respect to a non-notified merger.

2. Summary of the activity of the Competition Council

7. By law, the Competition Council is made up of 20 members, appointed for a six-year renewable term, some from among judicial magistrates and some by virtue of their expertise in the area of competition. The Chairman, Vice-Chairman and two other members hold full-time positions.

8. At the moment the Competition Council is composed of sixteen non-permanent members and one full time member. One of the sixteen non-permanent members is appointed as *ad interim* Chairman.

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9. The decisions taken by the Council or its Chairman in 2000 with respect to anti-competitive practises concerned one complaint, four requests for interim measures and one notified agreement.

10. As to concentrations, 43 operations were notified to the Council. Based on the reports submitted by the corps of rapporteurs, the Council took one decision to launch a Phase II investigation. The other operations were authorised or received tacit approval after the Phase I procedure.

3. *Summary of the activity of the Brussels Court of Appeal and the Cour de Cassation*

11. In 2000, the Brussels Court of Appeal and the Cour de Cassation took no decisions with regard to appeals against decisions of the Competition Council or its Chairman.

III. Role of the competition authorities in framing and implementing other policies

12. As yet, the Belgian competition authorities have no direct sway over the framing and implementation of other policies. However, a number of informal consultations have already taken place and the initiative has been taken to forward opinions to supervisory Ministries regarding regulatory projects that had come to the attention of the competition authorities.

IV. Publication

13. Belgian legislation on competition law (the Act on the protection of economic competition, co-ordinated on 1 July 1999, and its implementing decrees), along with certain information from the Belgian competition authorities, is available from the Ministry of Economic Affairs web site at the following address: <http://mineco.fgov.be/>.

REPORT

I. Amendments and proposed amendments to competition law and policy

14. During the year 2000, there were no new provisions involving competition law and related matters, neither were there proposed amendments to the current legislation.

II. Implementation of competition law and policy

1. Organisation

1.1. Competition Service and Corps of rapporteurs

15. The amendments to the Belgian Competition Act (incorporated into the Act on protection of economic competition, co-ordinated on 1 July 1999) which entered into force in 1999 have caused some changes within the Competition Service. The amendments have established a Corps of rapporteurs near to the Competition Service whose members are responsible for heading and organising investigations and preparing and submitting investigative reports to the Competition Council.

16. Pending recruitment of permanent rapporteurs by competitive examination, two acting rapporteurs have been appointed among the staff of the Service until the definitive appointments.

17. During the second half of the year 2000, 17 new permanent staff members have joined the Service. The formation and education of this new staff is a priority.

1.2 Competition Council

18. By law, the Competition Council is made up of 20 members, appointed for a six-year renewable term, some from among judicial magistrates and some by virtue of their expertise in the area of competition. The Chairman, Vice-Chairman and two other members hold full-time positions.

19. At the moment the Competition Council is composed of sixteen non-permanent members and one full time member. One of the sixteen non-permanent members is appointed as *ad interim* Chairman.

20. The Chairman, Vice-Chairman and the other full-time member are expected to be appointed in the course of the year 2001.

2. Anti-competitive practices, including agreements and abuse of dominant position

2.1 Competition Service and Corps of rapporteurs

21. Requests and complaints regarding anti-competitive practises are referred by the Competition Council to the Corps of rapporteurs whose members supervise the Service's investigations.

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22. The Corps of rapporteurs submitted three investigative reports to the Competition Council Chairman concerning a request for interim measures.

2.2 *Competition Council*

23. Requests and complaints regarding restrictive practises are brought before the Competition Council, which refers them to the Corps of rapporteurs for investigation.

24. The Competition Council or its Chairman have received three requests for interim measures, six complaints and two notifications of an agreement.

25. The decisions taken by the Council or its Chairman in 2000 concerned one complaint, four requests for interim measures and one notified agreement.

2.3 *Brussels Court of Appeal and the Cour de Cassation*

26. One decision (in the VZW Radio Tienen/SABAM case¹) was appealed to the Brussels Court of Appeal. However, the Brussels Court of Appeal has not taken a decision yet.

2.4 *Statistical assessment*

Table 1: Anti-competitive practices in 2000

	Notification	Report	Decision
Agreements	2	-	1
Complaints	6	-	1
Interim measures	3	3	4
Investigations at Council's request	1	-	-
Investigations at Minister's request	2	-	-
Investigations on own initiative	-	-	-
Total	14	3	6

Table 2: Anti-competitive practises - Recap 1993-2000

	Notification	Report	Decision by the Council
Agreements	55	19	6
Complaints	129	41	11
Interim measures	43	43	23
Investigations at Council's request	6	1	-
Investigations at Minister's request	5	1	-
Investigations on own initiative	2	-	-
Industry-wide surveys	2	-	-
Total	242	105	40

2.5 *Important cases*

27. a. In the **VZW Radio Tienen/Sabam case**², Radio Tienen (a private radio station) had lodged a complaint against Sabam (a company responsible for the collection, distribution and administration of intellectual property rights) and subsequently requested for interim measures. The plaintiff contended that Sabam was abusing its dominant position by unilaterally imposing unfair conditions for the use of its repertoire and by imposing different conditions on public radio's.

28. The Council Chairman decided not to order interim measures because of the absence of urgency (the complaint was lodged in 1997 while the request for interim measures was made in 1999) but found however that there was a *prima facie* abuse of dominant position.

29. Radio Tienen has appealed this decision at the Brussels court of Appeal. At the moment the appeal procedure is still pending.

30. b. In the **Source/IMS case**³, Source had lodged a complaint against IMS together with a request for interim measures because of the tying practises of IMS. The Council Chairman partially granted the requested interim measures and ordered IMS to suspend its tying practises. Furthermore, the Council Chairman ordered IMS to adopt a transparent price structure. However, no penalty payment was imposed.

31. Subsequently, Source found that the new price structure of IMS was a disguised tying practise and Source lodged a new request for interim measures

32. The Council Chairman decided to order interim measures and imposed this time a penalty payment on IMS.

33. c. In the **ETE-Kilt/ASAF case**⁴ the plaintiffs requested interim measures after having lodged a complaint. The plaintiffs (exclusive distributors in Belgium and Luxembourg of Dunlop tires for karting) held that ASAF (automobile association) was excluding them from the market by, amongst others, unilaterally establishing technical specifications they could not meet, in a call for tender for the selection of tires to be used in competitions during the year 2000.

34. The Council Chairman partially granted the requested interim measures by prohibiting ASAF to call for tenders in 2001 which did not fulfil certain conditions. Furthermore, the Council Chairman prohibited ASAF to impose technical specifications leading to the exclusion of certain tire brands in a non objective way.

35. d. In the **ASA Systems/UPEA case**⁵, ASA Systems (a company selling and installing alarm systems) lodged a request for interim measures. ASA Systems contended that UPEA (an association of insurance companies responsible for establishing regulations in the field of protection systems against theft) had abused its dominant position by withdrawing ASA Systems from the list of approved alarm fitters.

36. Since the majority of insurance companies are member of UPEA and the approval and withdrawal decisions of UPEA are applied by them in their relations with their clients, the Council Chairman judged that UPEA *prima facie* held a dominant position.

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37. The Council Chairman found that there was a *prima facie* abuse of dominant position and partially granted the requested interim measures.

3. *Mergers and acquisitions*

3.1 *Activities of the Competition Service and the Corps of rapporteurs*

38. In a large majority of cases, the Corps of rapporteurs held a pre-notification meeting with the parties, which made it possible to simplify the task and ease the burden on all parties involved.

39. The Corps of rapporteurs submitted 42 investigative reports to the Council. In respect of one notified merger, a Phase II investigation was carried out. Furthermore, the Corps of rapporteurs submitted one investigative report following investigations carried out at the request of the Council with respect to a non-notified merger.

3.2 *Activities of the Competition Council*

40. In accordance with the amendments made to the Competition Act in 1999, concentrations must be now notified to the Competition Council within one month of the conclusion of the agreement, the publication of the purchase or exchange offer or the acquisition of a controlling share. During the year 2000, 43 operations were notified to the Council.

41. On the basis of investigative report submitted by the corps of rapporteurs, the Council took one decision to launch a Phase II investigation (De Beers/Ashton Mining case). The Council took in total 35 authorisation decisions and 5 operations received tacit approval as the deadlines for action expired.

3.3 *Activities of the Brussels Court of Appeal*

42. In 2000, no merger decisions were appealed against neither did the Brussels Court of Appeal take a decision concerning appeals lodged against merger decisions.

3.4 Statistical assessment

Table 3: Merger control - Recap 1993-2000

	1993	1994	1995	1996	1997	1998	1999	2000	Total
Notifications	30	39	48	46	60	52	35	43	353
Decisions to launch Phase II	1	3	1	1	3	3	1	1	14
Decisions to approve	24	41	45	27	22	15	5	35	214
Decisions not to approve	-	1	-	1	1	1	1	-	5
Tacit approval	-	-	3	17	36	39	30	5	130
Cases outstanding	6	3	3	4	5	5	1	5	32
Cases appealed	-	1	-	1	1	1	1	-	5
Concentrations approved on appeal	-	-	-	1	1	1	-	-	3
Divers	-	-	-	-	-	-	-	2	2

3.5 *Important cases*

43. a. In the **De Beers/Ashton Mining case**⁶, De Beers (a company active in the field of exploration, exploitation and marketing of diamonds) issued a public offer on all the shares of Ashton Mining (a company active in the field of exploration and exploitation of diamonds). The Council concluded that there were serious doubts as to whether the concentration was permissible and decided to launch Phase II of the procedure.

44. However, in the course of the Phase II investigation, De Beers withdrew the public offer since the conditions of the offer were not fulfilled anymore. Therefore, the request for clearance of the concentration became without object.

45. b. In general, it can be observed that the Council seems to impose fines more rapidly for non respect of the deadlines for notification. This can be explained by the fact that following to the amendments of 1999 to the Competition Act, the deadlines for notification have been increased up to one month (instead of one week under the old regime).

III. **Role of the competition authorities in framing and implementing other policies, e.g. regulatory reform, trade policy and industrial policy measures**

46. As yet, the Belgian competition authorities have no direct sway over the framing and implementation of other policies. However, a number of informal consultation have already taken place and the initiative has been taken to forward opinions to supervisory Ministries regarding regulatory projects that had come to the attention of the competition authorities.

IV. **Competition authorities: resources**

1. *Competition Service and Corps of rapporteurs*

1.1 *Overall resources*

a) Annual budget

47. Expenditure relating to the activities of the Competition Service and the Corps of rapporteurs comes under the general budget of the Business Policy Administration and is not a separate item.

b) Staff (man-years)

	1994	1997	1999	2000
- Lawyers	7	9	8	13
- Economists	6	9	9	11
- Other professionals	1	4	3.5	6
- Support staff	4.5	5	6.5	6.5
Total	18.5	27	27	36.5

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48. All of the graduates, except for one, have civil servant status. Two of the permanent staff members have been acting rapporteurs since 1999.

1.2 *Human resource allocation*

a) anti-competitive practices:	20
b) concentrations:	5
c) rapporteurs:	2
d) other activities (general policy):	3
e) secretariat: - Service:	4
- corps of rapporteurs:	2.5

2. *Competition Council*

2.1 *Annual budget*

49. The Council has an operating budget of BF 7.2 million.

2.2 *Staff*

50. By law, the Competition Council is made up of 20 members, appointed for a six-year renewable term, some from among judicial magistrates and some by virtue of their expertise in the area of competition. The Chairman, Vice-Chairman and two other members hold full-time positions.

51. At the moment the Competition Council is composed of sixteen non-permanent members and one full time member. One of the sixteen non-permanent members is appointed as *ad interim* Chairman.

52. Furthermore, the secretariat of the Competition Council is composed of a secretary (lawyer), an adjunct secretary (lawyer) and three support staff members.

53. The Chairman, Vice-Chairman and the other full-time member are expected to be appointed in the course of the year 2001.

V. **Publication**

54. Belgian legislation on competition law (the Act on the protection of economic competition, co-ordinated on 1 July 1999, and its implementing decrees), along with certain information from Belgian competition authorities, is available from the Ministry of Economic Affairs web site at the following address: <http://mineco.fgov.be/>

NOTES

1. Decision of Council Chairman n° 2000-V/M-27 of 30 August 2000, VZW Radio Tienen/SABAM (*Moniteur Belge*, 9 januari 2001).
2. See supra.
3. Decision of the Council Chairman n°2000-V/M-34 of 27 October 2000, Source/IMS (*Moniteur Belge*, 21 February 2001).
4. Decision of the Council Chairman n°2000-V/M-39 of 6 December 2000, ETE-Kilt/ASAF (*Moniteur Belge*, 27 February 2001).
5. Decision of the Council Chairman n°2000-V/M-22 of 28 June 2000, ASA Systems/UPEA (*Moniteur Belge*, 23 November 2000).
6. Council Decision n° 2000-C/C-31 of 18 October 2000, De Beers Australia Holdings Pty Ltd/Ashton Mining Ltd.