

BELGIUM*(1999)***Summary****I. New legislation and proposed reforms**

1. The Act on the protection of economic competition, co-ordinated on 1 July 1999, incorporates the amendments introduced by Parliament in 1999.

2. The main features of this reform are as follows:

- the creation of four full-time positions on the Council, including the posts of Chairman and Vice-Chairman;
- the creation of a corps of rapporteurs in the Competition Service. Initially four in number, these rapporteurs' main responsibilities are to head investigations, prepare investigative reports and submit them to the Competition Council;
- the thresholds for notifying concentrations have been amended. The market share threshold has been abolished and only turnover thresholds remain: at least two of the firms involved must have turnover in Belgium of at least 15 million Euros, and their total combined Belgian turnover must exceed 40 million Euros;
- the Council of Ministers can now authorise a concentration that the Competition Council has found inadmissible, on the grounds that its contribution to the common good would outweigh the risk of restraint of competition.

3. A number of Royal Decrees implementing the Act on the protection of economic competition have been adapted in accordance with the amendments referred to above, including the Royal Decrees governing procedures, notification of agreements, notification of concentrations and the lodging of complaints.

4. Moreover, there were further regulatory reforms leading to a gradual opening of public monopolies to competition.

II. Implementation of competition law and policy***1. Anticompetitive practices (agreements and abuse of dominant position)******1.1 Summary of the activity of the Competition Service***

5. Pending expansion, which should make it possible to recruit 20 additional staff by the end of the year 2000, the Competition Service of the Prices and Competition Division continues to face problems of understaffing.

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6. The Service submitted a total of 27 cases to the Council concerning agreements, complaints and requests for provisional measures.

7. The cases dealt with -- or still under investigation -- focused primarily on abuse of dominant position (in the telecommunications and food sectors), agreements in the waste disposal sector and on the problems raised by the relations between members of the professions and their official bodies.

1.2 Summary of the activity of the Competition Council

8. The first six-year term of office of Council members expired in mid-1999, but it was not possible to appoint a new Council in 1999. Pending these appointments, however, the "former" Council has continued its activities, but on a reduced basis, as decisions have only been handed down on two complaints and seven requests for provisional measures.

1.3 Summary of the activity of the Brussels Court of Appeal and the Cour de Cassation

9. Two decisions by the Competition Council (a motorcycle importers case¹ and the Way Up / Belgacom case²) and a decision by the Council Chairman on a request for provisional measures (the Signalson / UPEA case³) were appealed to the Brussels Court of Appeal.

10. In its ruling of 7 May 1999, the *Cour de Cassation* (the supreme court of appeal) found that the Pharmacists' Association is a business association as defined by Section 2 §1 of the Act on the protection of economic competition, and that responsibility for reviewing whether its decisions that directly or indirectly affect competition comply with the requirements of competition law lies with the disciplinary bodies of the association. However, this ruling did not settle the issue of whether entities other than the bodies of the association -- namely the Belgian competition authorities -- may also have jurisdiction in such cases.

2. Concentrations

2.1 Notifications to the Competition Service

11. Activities regarding mergers and acquisitions declined sharply, in particular because of the legislative amendments regarding notification thresholds, with 35 operations notified as compared to 52 in 1998. One in-depth (Phase II) investigation of these operations was conducted.

12. Despite the reform, the number of reported concentrations having only a limited impact on the Belgian market or markets concerned remained substantial, which also explains the large number of cases that receive tacit approval.

2.2 Activity of the Competition Council

13. Based on the case files handed over by the Competition Service, the Council took one decision to launch a Phase II investigation and five authorisation decisions, and it issued one refusal (The Coca-Cola Company / Cadbury Schweppes⁴). The other 30 operations received tacit approval as the deadlines for action expired.

2.3 *Activity of the Brussels Court of Appeal*

14. In 1999 the Brussels Court of Appeal ruled on the appeal to the IMS Health Incorporated / Pharmaceutical Marketing Services Inc.⁵ decision; the Court rejected the procedural application, and the appeal was then withdrawn.

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

15. 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

16. 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

1. Summary of new provisions involving competition law and related matters

17. The Act on the protection of economic competition, co-ordinated on 1 July 1999, incorporates the amendments introduced by Parliament in 1999.

18. The main features of this reform are as follows:

- the conversion of the functions of four members of the Council, including those of the Chairman and Vice-Chairman, into full-time positions;
- the creation of a corps of rapporteurs in the Competition Service. Initially four in number, these rapporteurs' main responsibilities are to head investigations, prepare investigative reports and submit them to the Competition Council;
- the thresholds for notifying concentrations have been amended. The market share threshold has been abolished and only turnover thresholds remain: at least two of the firms involved must have turnover in Belgium of at least 15 million Euros, and their total combined Belgian turnover must exceed 40 million Euros;

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- if the Competition Council has decided that a concentration was not permissible, the Council of Ministers may authorise the concentration on the grounds that its contribution to the common good would outweigh the risk of restraint of competition.

19. A summary of the Act, the latest amendments to which entered into force on 1 October 1999, is presented in Section 2 below. The Act as amended is annexed to the Royal Decree of 1 September 1999 co-ordinating the Act of 5 August 1991 on the protection of economic competition.

20. A Royal Decree amending the Royal Decree of 23 March 1993 on the notification of business concentrations was issued in 1999. The draft Royal Decrees amending Royal Decrees of 15 March 1993 on procedures, of 23 March 1993 on applications and notifications in respect of restrictive practices and of 22 January 1998 on the filing of complaints were adopted in early February 2000. The amendments are aimed at adapting the provisions of these various decrees to the new principles laid down in the Act.

21. Regulatory reforms enabling a gradual opening up to competition of public monopolies include new legislation on the organisation of the electricity market, transposing into domestic law European Directive 96/92/EC, which entered into force during the first half of 1999.

2. *Presentation of the Act on the protection of economic competition, co-ordinated on 1 July 1999*

2.1 *General framework*

22. Specific legislation in the field of competition has been in force in Belgium since 1993. In order to make companies legally secure, the Act is based on the European Union legislation in this area.

23. Substantial amendments were made by the Belgian Parliament in 1999, which were incorporated into the Act on the protection of economic competition, co-ordinated on 1 July 1999.

2.2 *Scope of application*

24. *Ratione personae*, the Act is applicable to “undertakings”, i.e. to any physical or legal person pursuing an economic objective in a sustainable manner. This definition draws upon EU law and is broad in scope.

25. *Ratione materiae*, the Act covers two forms of competitive practices: restrictive practices and concentrations.

26. **Restrictive practices**, in respect of which the Act adopts the principle of prohibition, encompasses:

- agreements between undertakings, decisions by associations of undertakings and concerted practices, the object or effect of which is to prevent, restrict or materially distort competition in the relevant Belgian market or a substantial part of it;
- the fact that one or more undertakings abuse a dominant position in the relevant Belgian market or a substantial part of it.

27. These provisions correspond to Articles 81 EC and 82 EC. As in the European system, the agreements and decisions may be exempt from prohibition if companies give notice thereof. Exemptions of this sort may be granted individually or collectively.

28. With regard to **business concentrations** (mergers, take-overs and creation of joint ventures), the legislation provides for presumption of control if the firms have aggregate consolidated turnover in excess of 40 million Euros, i.e. BF 1 613 596 000, and at least two of the firms in question each have turnover of 15 million Euros, i.e. BF 605 098 500. These two conditions are cumulative.

29. The concentration must be deemed permissible when the firms in question together control less than 25 per cent of the market concerned or when the operation does not create or reinforce a dominant position that significantly impedes effective competition in the Belgian market or in a substantial part of it.

2.3 *Bodies*

30. The Act assigns responsibility for overseeing competition to four bodies:

- the Competition service
- the corps of rapporteurs
- the Competition Council
- the Competition Commission

31. In addition, the Minister with responsibility for Economic Affairs and the Council of Ministers have a number of competition-related powers.

32. The **Competition Service**, which is a unit of the Ministry of Economic Affairs, is responsible for seeking out and noting the existence of competitive practices. It investigates all cases in which action must be taken and enforces any rulings.

33. The Competition Service and the rapporteurs assist European competition authorities with enforcement of EU rules on competition.

34. A **corps of rapporteurs** has been set up within the Competition Service. Their main tasks are to:

- 1) head and organise investigations;
- 2) issue instructions to agents assigned to carry out investigative measures;
- 3) prepare investigative reports and submit them to the Competition Council.

35. The **Competition Council**, set up under the auspices of the Ministry of Economic Affairs, is an administrative entity having the authority to take decisions, put forward proposals and give opinions. Under its decision-making powers, it ascertains whether or not prohibitions of restrictive practices have been infringed, and it alone is empowered to grant individual exemptions at the request of the undertakings involved. It also rules on the acceptability of concentrations.

36. 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.

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37. The **Competition Commission** is an advisory body representing the viewpoints of labour, industry, agriculture, commerce, crafts and consumers. Among its functions is to issue opinions, on its own initiative if it so chooses, on any matter involving general competition policy.

38. The **Minister** responsible for Economic Affairs can ask the corps of rapporteurs to carry out investigations and to conduct general or sector-specific investigations. The Minister can also lodge an appeal with the Brussels Court of Appeal contesting the decisions of the Competition Council.

39. When it is in the public interest, the **Council of Ministers** may authorise, either on its own authority or at the parties' request, a concentration that the Competition Council found inadmissible.

2.4 *Rules of procedure*

2.4.1 Procedure concerning restrictive practices

40. Requests and complaints regarding restrictive practices are brought before the Competition Council, which refers them to the corps of rapporteurs for investigation.

41. Following his investigation and prior to making his reasoned report, the rapporteur notifies the undertakings concerned of any allegations against them and summons them in order to let them comment.

42. After the report has been submitted to the Council, the rapporteur notifies the undertakings whose activity is being investigated, as well as the plaintiff if the Council deems this appropriate, and sends them a copy of the report at least one month before the date of the hearing at which the Council will examine the case. The rapporteur informs the parties of the fact that they may consult the case file at the Competition Council secretariat and obtain a copy for a fee.

43. The Council then examines the case at the hearing. It hears the undertakings whose activity is being investigated, as well as any plaintiffs that so request. The Council hears any physical or legal person that it deems necessary. A decision must be taken within six months of the report being submitted to the Council.

44. Upon request, the Competition Council may rule, in a reasoned decision, that individual agreements, decisions or concerted practices are exempt from the prohibition specified in the Act. This exemption may be combined with conditions and instructions, and is granted for a specified period, which is renewable.

45. In the case of a request for negative clearance, the Competition Council may rule in a reasoned decision that, on the basis of the elements at its disposal, there is no need for it to intervene.

2.4.2 *Procedure concerning concentrations*

46. Concentrations must be 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. The one-month period begins with whichever of these events occurs first. Under certain conditions, the parties may also notify the Council of a planned agreement.

47. The rapporteur designated by the corps of rapporteurs investigates the case as soon as the notification forwarded by the Council has been received or, if the required information is incomplete, as soon as full information has been received.

48. The rapporteur then submits the case file and his reasoned report to the Competition Council. At least two weeks prior to the date of the hearing at which the Council is to examine the case, he sends a copy of his report to the undertakings whose concentration is being investigated and to the most representative organisations of the workers in these undertakings, and he informs these parties of the fact that they may consult the case file at the secretariat and obtain a copy for a fee.

49. The Council then examines the case at the hearing, and hears the undertakings that are parties to the concentration.

50. If concentration falls within the scope of the Act, the Competition Council may, during the first phase of the procedure, either:

- a) decide that the concentration is permissible. The notifying parties may, until such time as the Competition Council has taken its decision, amend the terms of the concentration; or
- b) conclude that there are serious doubts as to whether the concentration is permissible and decide to launch Phase II of the procedure.

51. The Council must reach a decision during the first phase within no more than 45 days. The rapporteur must submit his report within one month. These periods begin on the day after the notification was received or, if the information to be provided at the time of the notification was incomplete, on the day after full information was received.

52. The concentration is deemed permissible if the Competition Council has not handed down a decision within 45 days. This period may be extended only at the express request of the parties concerned, and for no longer than they propose.

53. If the Competition Council decides to launch Phase II of the procedure, the rapporteur submits a further report to the Competition Council, which sends a copy to the parties concerned.

54. The concentration is deemed to have been approved if the Competition Council has not handed down a decision within 60 days of the decision to launch Phase II of the procedure. This period may be extended only at the express request of the parties concerned, and for no longer than they propose.

55. Within 30 days of being notified of the Competition Council's decision, the Council of Ministers may, on its own initiative or at the request of the notifying undertakings, authorise a concentration on the grounds that its contribution to the common good would outweigh the risk of restraint of competition.

56. The Council of Ministers must take this decision within 30 days of being notified of the Competition Council's decision. If the Council of Ministers fails to reach a decision within this time, the authorisation is deemed not to have been granted.

2.5 *Provisional measures*

57. At the plaintiff's request, or that of the Minister, the Chairman of the Competition Council may take provisional measures to suspend restrictive practices under investigation if there is an urgent need to avert a situation that could cause serious, imminent and irreparable harm to the undertakings whose interests are affected by such practices, or that is contrary to the public interest.

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2.6 Control over decisions of the Competition Council, its Chairman and the Council of Ministers

58. In order to foster uniformity in competition-related case law, Belgian law has empowered the Brussels Court of Appeal to hear appeals of decisions by the Competition Council and its Chairman. The Court of Appeal has unlimited jurisdiction over such appeals.

59. The Council of Ministers' decisions concerning concentrations may be appealed to the *Conseil d'Etat*, which verifies their legality.

2.7 Implementation of the Act by ordinary jurisdictions

60. Courts may invalidate agreements that are prohibited under the Act and enjoin abuses of dominant position. Judges may also draw all civil consequences from such prohibition (e.g. by awarding compensation), but they may grant neither exemptions nor negative clearance.

61. Furthermore, if the outcome of a case hinges on whether or not a competitive practice is lawful, the court hearing the case, except for the *Cour de Cassation*, must stay the proceedings and request a preliminary ruling from the Brussels Court of Appeal.

II. Implementation of competition law and policy

1. Action against anticompetitive practices, including agreements and abuse of dominant positions

a) Summary of activities

1. Summary of the activities of the Competition Service

62. In 1999, the material and human resources of the Price and Competition Division remained stable. Pending expansion of the Competition Service, which should make it possible to recruit 20 additional staff by the end of the year 2000, it continues to face a staff shortage, since the total number of staff employed (both regular employees and those hired on a contractual basis) remains clearly inadequate for optimal operational effectiveness.

63. Despite this handicap, the Service nonetheless submitted four cases to the Council concerning agreements and ten concerning complaints. Ten requests for provisional measures were also investigated and reports filed with the Chairman of the Council. Furthermore, the Service submitted three cases following investigations carried out on its own initiative or at the request of the Minister and the Council. However, as the table in section 4 below shows, the backlog that has built up since the years when the Act was first applied will not be eliminated in the near future.

64. The cases dealt with -- or still under investigation -- focused primarily on abuse of dominant positions (in the telecommunications and food sectors), agreements in the waste disposal sector and on the problems raised by the relations between members of the professions and their official bodies.

65. With regard to the new cases filed with the competition authorities, it must be mentioned that an abnormally large number of requests for provisional measures were filed together with complaints: in

1999, ten out of twelve newly filed cases involving complaints were accompanied by a request for provisional measures. This practice, which no doubt is partly explained by the relative slowness of investigations of complaints, is unwarranted inasmuch as it turns out, in nearly all cases, that interim measures cannot be ordered because there is no urgency or serious harm. Furthermore, the fact that these cases must be given priority disturbs the smooth running of the Service, since they are investigated to the detriment of longer-standing cases that do not qualify for this special treatment.

66. As for the corps of rapporteurs newly established by the Act, whose members, as has been seen, are responsible for heading and organising investigations and preparing and submitting investigative reports to the Competition Council, only two acting rapporteurs have been appointed among the staff of the Service, pending recruitment of permanent rapporteurs by competitive examination.

2. Summary of the activities of the Competition Council

67. The initial six-year term of the members of the Council expired in mid-1999. However, it was not possible to appoint a new Council in 1999, both because of the amendments to the Act on the protection of economic competition being made at that time -- which concerned both the composition of the Council (20 active members rather than twelve active and twelve alternate members) and the types of term (introduction of four full-time positions, including the chair and vice-chair) -- and the legislative elections being held in June 1999. Pending these appointments, the "former" Council nevertheless continued its activities, although on a reduced basis.

68. The decisions taken by the Council or its Chairman in 1999 concerned two complaints (one complaint concerning the barriers to the parallel import of motorcycle brands and one concerning the telephone rates granted to press agencies) and seven requests for provisional measures (three requests concerning relations between pharmacists and their professional association, one concerning the certification of alarm system installers by the professional association of insurance companies and three concerning the consequences of the IMS case in the information and pharmaceutical sales monitoring sector, one of which resulted in a decision to grant provisional measures⁶).

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

69. Two decisions of the Competition Council (the motorcycle importers case⁷ and the Way Up/Belgacom case⁸) and a decision of the Council Chairman on a request for provisional measures (Signalson/UPEA case⁹) were appealed to the Brussels Court of Appeal.

70. In 1999 the Brussels Court of Appeal made a ruling in the appeal of the Way Up / Belgacom decision: the Court rejected the procedural application, and the appeal was then withdrawn.

71. In a ruling of 7 May 1999, the *Cour de Cassation* found that although pharmacists are not businessmen as defined in the Business Code and play a social role, they nevertheless perform an activity directed at service provision and the supply of goods. They continuously pursue an economic goal and as a rule must be considered as undertakings as defined by Belgian competition legislation.

72. The Pharmacists' Association is a business association as defined by Section 2 §1 of the Act on the protection of economic competition, and responsibility for reviewing whether its decisions that directly or indirectly affect competition comply with the requirements of competition law lies with the disciplinary bodies of the association. However, this ruling did not settle the issue of whether entities other than the bodies of the association -- namely the Belgian competition authorities -- may also have jurisdiction in such cases.

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4. Statistical assessment

Table 1: Competitive practices in 1999

	Notification	Report	Decision
a) Practices restricting competition			
Notifications	2	4	-
Complaints	12	10	2
Provisional measures	10	10	7
Investigations at Council's request	-	1	-
Investigations at Minister's request	-	1	-
Investigations on own initiative	-	1	-
Total	24	27	9
b) Merger control	35	35	6
Grand total	59	62	15

Table 2: Practices restricting competition - Recap 1993-99

	Notification	Report by the Service	Decision by the Council
Notifications	53	19	5
Complaints	123	41	10
Provisional measures	40	40	10
Investigations at Council's request	5	1	-
Investigations at Minister's request	3	1	-
Investigations on own initiative	2	-	-
Industry-wide surveys	2	-	-
	228	102	34

b) Important cases

73. In the **Unofficial motorcycle importers / Official importers** case¹⁰, a complaint had been lodged by certain unofficial importers and retailers against five official motorcycle importers and their trade association. The plaintiffs contended that the official importers were abusing their dominant position in the procedure used to apply for certificates of conformity for motorcycles imported through the parallel network and the inspection to which these motorcycles were subjected. The plaintiffs also contested the agreement concluded by the trade association regarding the charge and formalities for obtaining the certificate of conformity, arguing that the system was aimed at undermining the competitive position of parallel importers.

74. The Council considered that each official importer of a given brand of motorcycles, inasmuch as it was the sole company authorised to carry out these checks and to issue the certificates of conformity for its own brand of motorcycles, had a dominant position in the market for certificates of conformity.

75. The Council found that these official importers had abused their dominant position, in particular by imposing the brands' official retailers as the required intermediaries for filing certification applications, monitoring the procedure and issuing certificates of conformity, by imposing the brands' official retailers

as intermediaries for delivering and installing spare parts, by requiring that new motorcycles be presented for the certification procedures fully assembled and by subjecting them to a series of superfluous tests. It ordered them to cease and desist from these practices and imposed fines ranging from BF 2.2 to 30 million on four of the parties involved (for a total of BF 45.8 million).

76. In the **Way Up / Belgacom** case¹¹, the Way Up firm lodged a complaint against Belgacom for abuse of dominant position following Belgacom's refusal to grant a preferential rate to the Way Up press agency, as it had done to the Belga agency. To justify its position, Belgacom invoked the Act of 19 December 1997, under which Belgacom is authorised to grant special telephone rates "to daily political and general information newspapers, to certain weeklies and to the Belga agency".

77. As the Court of Justice of the European Communities had ruled in its interpretation of Articles 81 and 82 EC, the Competition Council deemed that Sections 2 and 3 of the Act on the protection of economic competition only concern anticompetitive behaviour adopted by firms on their own initiative. If the law broadly defined requires anticompetitive behaviour or if the legal constraints thus created eliminate all possibility of competitive behaviour on their part, Sections 2 and 3 do not apply, as in the case submitted to the Council.

78. The questionable nature of the choices made by Parliament in no way alters this conclusion. If the law introduces discriminatory treatment between two undertakings, even though their situation seems to call for the same treatment, the parties concerned must bring the matter before the *Cour d'Arbitrage* and ask for a preliminary ruling.

79. In this case, the Council deemed that such a ruling was in no way indispensable in order to rule on whether there was an anticompetitive practice or not. It therefore decided that the refusal to grant press agencies other than the Belga firm a 50 percent reduction was not a restrictive practice as defined by the Act on the protection of economic competition, inasmuch as it was motivated exclusively by the Act of 19 December 1997.

2. *Mergers and acquisitions*

a) *Statistics on the number, size and types of mergers notified or subject to control*

1. Activities of the Competition Service

80. In a large majority of cases, the Service held a pre-notification meeting with the parties, which made it possible to reduce the number of reported operations significantly and to simplify the task and ease the burden on all parties involved.

81. Merger and acquisition activity declined sharply, in particular because of the amendments to the Act regarding notification thresholds: 35 operations were notified, as compared to 52 in 1998. In each case, an investigation was held and a report then submitted to the Council. In respect of one notified merger, a further (Phase II) investigation was carried out.

82. The sectors undergoing reorganisation were very diverse, and only activities related to the banking sector stood out.

83. Despite the reform, the number of reported concentrations having only a limited impact on the Belgian market or markets concerned remained substantial, which also explains the large number of cases receiving tacit approval by the Council.

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2. Activities of the Competition Council

84. On the basis of case files submitted by the Competition Service, the Council took one decision to launch a Phase II investigation and five authorisation decisions and made one refusal (the Coca-Cola Company / Cadbury Schweppes). The 30 other operations received tacit approval as the deadlines for action expired.

3. Activities of the Brussels Court of Appeal

85. In 1999, the Brussels Court of Appeal ruled on the appeal to the IMS Health Incorporated / Pharmaceutical Marketing Services Inc.¹² decision; the Court rejected the procedural application, and the appeal was then withdrawn.

4. Statistical assessment

Table 3: Merger control - Recap 1993-99

	1993	1994	1995	1996	1997	1998	1999	Total
Notifications	30	39	48	46	60	52	35	310
Decisions to launch Phase II	1	3	1	1	3	3	1	13
Decisions to approve	24	41	45	27	22	15	5	179
Decisions not to approve	-	1	-	1	1	1	1	5
Tacit approval	-	-	3	17	36	39	30	125
Cases outstanding	6	3	3	4	5	5	1	1
Cases appealed	-	1	-	1	1	1	1	4
Concentrations approved on appeal	-	-	-	1	1	1	-	2

b) Important cases

86. Among the notifications made in 1999, **the Coca-Cola Company / Cadbury Schweppes**¹³ merits a further description.

87. This case involved the acquisition by the Coca-Cola Company (TCCC) of a whole range of brands belonging to the Cadbury Schweppes company, as well as some units producing concentrate for these brands (located outside Belgium). The operation concerned activities world-wide, except for France, the United States and South Africa.

88. The brands concerned by this operation were Schweppes, Canada Dry, Gini, Oasis and Dr. Pepper.

89. In its Phase I decision, the Council mainly sought to define the relevant market, since the notifying parties had notified "out of a concern for legal security" and considered that the 25 percent controlling threshold had not been reached by TCCC on the market that they thought was relevant, namely that of commercial beverages.

90. The Council did not agree with this analysis by the parties and adopted a more narrow definition of the market -- the same definition that had been selected by the Competition Service in its report, referring to a number of decisions by the European Commission -- i.e. the carbonated soft drink market, a market in which the notifying parties far exceeded the 25 percent threshold.

91. The very comprehensive range of brands of well-known soft drinks that TCCC would own following the concentration, together with this corporation's large market share, led the Council to consider that TCCC's very strong position would be reinforced by the operation. Consequently, the Council decided to launch Phase II of the investigation.

92. The further investigation carried out by the Service resulted in a proposal to the Council that the concentration be found inadmissible.

93. At the last minute -- on the very day of the Council hearing -- the parties amended their agreement so as to exclude Belgium from the operation, and asked to withdraw their notification. The Council held that since the control of concentrations was a matter of public policy, it was not for the parties to prevent it from examining a concentration, and that withdrawal under the pretext that the contract had been amended did not automatically remove the matter from the Council's jurisdiction.

94. The Council then analysed the effects of the change in the contract and found that the operation would still have an impact in Belgium, the main difference being that this impact would be gradual, instead of being immediate as it would have if the brands had been sold.

95. On the relevant market of carbonated soft drinks (+ the iced tea market segment), the Council found that the operation reinforced TCCC's dominant position, since the Cadbury Schweppes brands were known world-wide and the disappearance of Cadbury Schweppes would profoundly alter the competitive structure of the market concerned. Furthermore, TCCC would become the leader in six of the eight market segments concerned, and it had established a system of distribution network control that would enable it to maintain a constant supply of its products and would encourage distributors to promote TCCC's brands. In conclusion, the Council ruled that the concentration was inadmissible.

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

96. 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. Competition authorities: resources

1. Competition Service

1.1 Overall resources

a) Annual budget

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

b) Staff (man-years)

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

98. Only twelve of the 21 graduates are permanent staff (with civil servant status), nearly half (9) being employed on temporary contracts. In addition, two of the permanent staff members have been acting rapporteurs since 1999.

1.2 *Human resource allocation*

a) restrictive practices:	12.5
b) concentrations:	4
c) other activities:	3
d) Council:	2
e) secretariat: - of Service:	3.5
- of Council:	2

2. *Competition Council*

2.1 *Annual budget*

The Council has an operating budget of BF 7.2 million.

2.2 *Staff*

99. In 1999, the Council continued to function with its previously appointed members, with a theoretical membership of 24 (active + alternate members). All Council members, including the Chairman and Vice-Chairman, who are judges, served in the Council in addition to holding full-time employment elsewhere.

V. **Publication**

100. 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

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1. Council Decision No. 99-RPR-01 of 21 January 1999, Unofficial motorcycle importers / Official importers (*Moniteur Belge*, 13 March 1999)
2. Council Decision No. 99-RPR-06 of 22 April 1999, Way Up / Belgacom (*Moniteur Belge*, 18 August 1999)
3. Decision of the Council Chairman No. 99-VMP-05 of 19 April 1999, Signalson / UPEA (unpublished)
4. Council Decision No. 99-C/C-04 of 26 April 1999, The Coca-Cola Company / Cadbury Schweppes (*Moniteur Belge*, 7 July 1999)
5. Council Decision No. 98-C/C-16 of 14 December 1998, IMS Health Corporation / PMSI (*Moniteur Belge*, 9 March 1999)
6. Decision of the Council Chairman No. 99-VMP-07 of 6 October 1999, Source Informatics Belgium / IMS Health Belgium (unpublished)
7. Council Decision No. 99-RPR-01 of 21 January 1999 (*Moniteur Belge*, 13 March 1999)
8. Council Decision No. 99-RPR-06 of 22 April 1999 (*Moniteur Belge*, 18 August 1999)
9. Decision of the Council Chairman No. 99-VMP-05 of 19 April 1999, Signalson / UPEA (unpublished)
10. Council Decision No. 99-RPR-01 of 21 January 1999, Parallel motorcycle importers / Official importers (*Moniteur Belge*, 13 March 1999)
11. Council Decision No. 99-RPR-06 of 22 April 1999, Way Up / Belgacom (*Moniteur Belge*, 18 August 1999)
12. Council Decision No. 98-C/C-16 of 14 December 1998, IMS Health Corporation / PMSI (*Moniteur Belge*, 9 March 1999)
13. Council Decision No. 99-C/C-04 of 26 April 1999, The Coca-Cola Company / Cadbury Schweppes (*Moniteur Belge*, 7 July 1999)