(2001/C 318 E/093) **WRITTEN QUESTION E-0630/01**

by Bert Doorn (PPE-DE) and Karla Peijs (PPE-DE) to the Commission

(6 March 2001)

Subject: Guidelines on Vertical Restraints (Competition Law)

In its recent Guidelines on Vertical Restraints [1], the European Commission states that:

> Where an undertaking is dominant or becoming dominant as a consequence of the vertical agreement a vertical restraint that has appreciable anti-competitive effects can in principle not be exempted.

This statement has been objected to on the grounds that it would create a situation in which companies would be discriminated against. A Commission official has now responded to this objection in a published article [2] in which he states that:

> The general answer is that competition policy is and should be about discrimination between companies; the rules are stricter for those with market power than for those without and the rules are the strictest for the dominant companies.

So far as dominant positions are concerned, competition law as set out in the Treaty prohibits certain forms of conduct which are deemed to be abusive. However, in proscribing that conduct the law is not discriminating. It does not permit a practice to one competitor that is denied to another dominant competitor, rather it prevents a dominant competitor adopting a practice that the others cannot. The aim is maintaining a level playing field and safeguarding competition 'on the merits'.

The above statements reveal a possible change in the approach being adopted by the Commission in such cases. The inference is that in future competition law will be about discrimination between companies and not about preventing certain forms of anti-competitive conduct. This would be at odds with the ruling regarding equal treatment made by the CFI in the Langnese case.

1. Does the Commission agree that the fundamental principle of non-discrimination applies to competition law as to other EU-Law?

2. Does the Commission accept that there is a difference between a law that applies a general prohibition against certain conduct, albeit conduct that can only be practised by a dominant firm, and a law which prevents a dominant firm from adopting conduct that is open to other competitors in the market?

3. Does the Commission accept that the former does not discriminate between firms while the latter would do so?

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[1] OJ C 291, 13.10.2000, p. 1.
[2] www.nera.com/media/campaigns/campaign_info.cfm?show=nl&cid=1005.

Answer given by Mr Monti on behalf of the Commission

(11 May 2001)

The statements in the Guidelines on Vertical Restraints and in the article referred to by the Honourable Members merely explain that in applying the Community competition rules the Commission takes account of the position companies have on the relevant market.

In particular the texts explain that the Commission is only able to exempt a company's anti-competitive agreements if the conditions of Article 81(3) (ex Article 85) of the EC Treaty are fulfilled. The last criterion of Article 81(3), no elimination of competition for a substantial part of the products in question, is related to the question of dominance. Elimination of competition and dominance are closely linked. When a firm

is able to eliminate competition, this firm is dominant. This automatically implies that once dominant a company cannot fulfil all four conditions for exemption under Article 81(3) and individual exemption of its agreements is thus not possible. This is why, for instance, dominant companies should in general refrain from imposing non-compete obligations or applying loyalty rebates.

The described application of the Community competition rules is in agreement with the fundamental principle of non-discrimination as it treats equally firms who are in a similar situation; it treats equally those that are equal. However, the rules make a justified difference in treatment between companies that are not in a similar position. To treat differently those that are not equal does not conflict with the principle of non-discrimination. The rules are stricter for those with market power than for those without and the rules are strictest for dominant companies. Articles 81 and 82 (ex Article 86) of the EC Treaty make it clear that dominant companies can not engage in certain practices open to non-dominant companies because they are not in a similar market position.

(2001/C 318 E/094) **WRITTEN QUESTION E-0640/01**

by Robert Sturdy (PPE-DE) to the Commission

(6 March 2001)

Subject: Environmental impact of Low Frequency Active Sonar

It has been alleged in Germany that sound waves from Low Frequency Active Sonar (LFAS) both above and below water cause harm to cetaceans in the EU's seas. The German government has been testing LFAS systems for military purposes.

Is the European Commission, in one of its many environmental research capacities, considering this issue and studying the effects of LFAS on the marine environment?

Answer given by Mr Busquin on behalf of the Commission

(4 May 2001)

Although the specific programme on 'Energy, environment and sustainable development — Key action 3: Sustainable marine ecosystems' in no way precludes taking proposals for research on the impact of Low Frequency Active Sonar (LFAS) systems on cetaceans into consideration, the Commission has received no applications for funding research on this subject in response to the invitations to submit proposals published for this programme to date.

(2001/C 318 E/095) **WRITTEN QUESTION E-0641/01**

by Francesco Speroni (TDI) to the Commission

(6 March 2001)

Subject: Milk brand names

In Italy cartons of milk are marketed using the names of specific geographical areas (for example, Busto Arsizio milk or Brianza milk) without there being any connection between the area mentioned on the packaging and the area in which the milk is actually produced, which may be different.

Can the Commission say whether or not such commercial practices are in breach of the regulations in force in this area?