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I *Information*

Commission

[1] Text with EEA relevance

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(Information)

COMMISSION

Euro exchange rates [1]

20 January 2003

(2003/C 14/01)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,0653	LVL	Latvian lats	0,6219
JPY	Japanese yen	125,96	MTL	Maltese lira	0,4205
DKK	Danish krone	7,433	PLN	Polish zloty	4,0632
GBP	Pound sterling	0,6635	ROL	Romanian leu	35725
SEK	Swedish krona	9,1968	SIT	Slovenian tolar	230,7715
CHF	Swiss franc	1,4608	SKK	Slovak koruna	41,732
ISK	Iceland króna	84,4	TRL	Turkish lira	1773000
NOK	Norwegian krone	7,318	AUD	Australian dollar	1,8056
BGN	Bulgarian lev	1,9552	CAD	Canadian dollar	1,6367
CYP	Cyprus pound	0,5782	HKD	Hong Kong dollar	8,3082
CZK	Czech koruna	31,297	NZD	New Zealand dollar	1,9364
EEK	Estonian kroon	15,6466	SGD	Singapore dollar	1,8454
HUF	Hungarian forint	244,31	KRW	South Korean won	1250,98
LTL	Lithuanian litas	3,4531	ZAR	South African rand	9,421

[1] *Source:* reference exchange rate published by the ECB.

Final report of the Hearing Officer in case COMP/37.919 — Bank charges for the exchange of eurozone currencies — Germany

(pursuant to Article 15 of Commission Decision 2001/462/EC, ECSC of 23 May 2001 on the terms of reference of Hearing Officers in certain competition proceedings (OJ L 162, 19.6.2001, p. 21))

(2003/C 14/02)

(Text with EEA relevance)

The draft Decision gives rise to the following observations regarding the right to be heard:

1. On 1 August 2000 the Commission initiated formal proceedings with a view to find infringements of Article 81 EC, committed by banks on the German market for the exchange of eurozone currencies. By letters dated 3 August and 10 August 2000, a Statement of Objections (S/O) was sent to the following banks:

   1. Bayerische Hypo- und Vereinsbank AG
   2. Bayerische Landesbank Girozentrale
   3. BfG Bank AG
   4. Commerzbank AG
   5. Deutsche Genossenschaftsbank AG
   6. Deutsche Verkehrsbank AG
   7. Dresdner Bank AG
   8. Hamburgische Landesbank Girozentrale
   9. Landesbank Hessen-Thüringen Girozentrale
   10. Reisebank AG
   11. Vereins- und Westbank AG
   12. Westdeutsche Landesbank Girozentrale
   13. Fortis NV
   14. Fortis Services Nederland NV
   15. Fortis Bank (Holding) Nederland NV
   16. GWK Bank NV
   17. De Grenswisselkantoren NV

   No complainant or other third party participated in the proceedings.

2. Following requests from the parties, the Hearing Officer extended the initial deadline for responses to the S/O from 3 to 27 November 2000, thereby taking into account that the CD-ROM with the contents of the case file had been received by the parties only by mid September 2000. All of the parties, with the exception of Deutsche Genossenschaftsbank, replied in writing to the S/O and requested an oral hearing.

3. In their written submissions the parties moreover requested access to all parallel files relating to suspected infringements of Article 81 EC in other Member State markets for the exchange of eurozone currencies, and to the Dutch file in particular.

   (a) To justify their request for general access to parallel files, the banks relied heavily on the fact that the investigations in the aforementioned banking cases had initially been carried out under one and the same file number, and that the original community-wide case COMP/37.391 had thereafter been split up artificially into several separate national cases. The parties should therefore be afforded the opportunity to examine all the national files as to whether they contained documents with relevance to the German banking case.

   (b) The reasoning of the request for access to the Dutch banking case file was based mainly on the fact that most of the evidence used by the Commission against the German banks had been found during investigations in the premises of the GWK bank and had become part of the Dutch file. The documents in question were referred to in and copies of them annexed to the S/O addressed to the German banks. The latter suspected that the Dutch file might also contain disculpative information and claimed the right to check whether the Commission had supplied them with any documents which could turn out to be useful for their defence.

4. Following the request mentioned above under (b) the Hearing Officer inspected the Dutch file and extracted from it all documents which related directly or indirectly to the German banking case. These documents were transmitted to each of the addressees of the S/O by letter of 12 January 2001. The undertakings concerned were invited either to submit comments in writing before or after the oral hearing or to make known their views orally during the hearing. The Hearing Officer reserved his final position on both requests for a later stage of the procedure.

5. By letter of 6 August 2001, addressed to all of the banks cocnerned, the requests referred to above under 3(a) and (b) were rejected. The Hearing Officer took the view that the parties were not entitled to inspect the files on parallel banking cases, firstly because the Commission, by dividing up the documentary evidence received during the investigation and by opening several proceedings, each of which related to a suspected national cartel, had made correct use of its organisational powers and secondly because the parties' right of access concerned on documents that were directly or indirectly linked to the objections formally stated by the Commission. With the exception of the Dutch file, none of the files on parallel banking cases contained such documents.

   The Hearing Officer furthermore considered that the parties had been supplied with all the documentary evidence whether culpatory or disculpatory in nature, which was contained in the Dutch file and related to the suspected cartel on the German market for the relevant banking services. He denied the German banks the right to claim access to the other parts of the Dutch file, because they related exclusively to suspected arrangements made by Dutch banking institutions for their national market.

6. One party, Vereins- und Westbank AG, by letter of 22 January 2001, had claimed access to those documents which were added to the German banking case file after 19 September 2000 the day of receipt of the CD-ROM containing the documents filed before that date. They argued that the new information was needed in order to prepare the oral hearing. By letter of 23 January 2001 the Hearing Officer replied that the requested documents consisted of responses by other parties to the S/O and an exchange of letters with some of the parties on the further organisation of proceedings, both categories of documents not being accessible.

7. In the oral hearing which took place on 1 and 2 February 2001, the parties maintained that they had not been afforded the opportunity of taking notice of all the documents which were relevant for their defence. They criticised the Commission for the allegedly incomplete character of the case file (non-inclusion of the complaints which had led to the initiation of formal proceedings, lack of an inventory, missing of indications about the content of the non-accessible documents). The above criticisms had been rejected before by the Commission's Directorate COMP/E after consultation of the Hearing Officer.

8. The parties were invited to submit written oservations with regard both to results of the oral hearing and to an internal note of DG MARKT analysing the approximately 700 complaints by consumers mentioned in the S/O, which was sent to them on 26 February 2001. The deadline for both was the 16 March 2001.

9. During the months of April to June 2001, the parties entered into discussions with the Commission with a view to putting an end to the proceedings. Settlements were reached with Bayerische Landesbank Girozentrale, Hamburgische Landesbank Girozentrale, Landesbank Hessen Thüringen Girozentrale, Westdeutsche Landesbank Girozentrale and SEB Bank AG (former BfG Bank AG). After formal commitments from their part to substantially reduce their charges for the exchange of eurozone currencies before the beginning of the holiday season, the files were closed with regard to the above mentioned banks. Similar settlements were reached in the parallel proceedings concerning the banks in Finland (case COMP/37.788), Ireland (COMP/37.790), Belgium (COMP/37.787), Portugal (COMP/37.789), and the Netherlands (COMP/37.791). The proceedings against Commerzbank AG, Dresdner Bank AG, Bayerische Hypo- und Vereinsbank AG, Vereins- und Westbank AG and Deutsche Verkehrsbank/Reisebank AG were continued.

10. By letters received by the Commission between 13 and 30 August 2001, the latter parties claimed access to all documents in the Commission's possession containing information about the conditions upon which the files concerned had been closed in respect of other German and non-German banks, arguing that they had a right to examine whether they had become victims of discriminatory treatment by the Commission.

11. By letters of 16 and 17 August and 4 and 17 September 2001 the Hearing Officer rejected these requests. He stated that the commitments reached with the parties in non-German banking cases with a view to putting an end to infringements committed on non-German markets did not in any way affect the rights of defence of the German banks involved in a separate procedure which had been initiated against them for infringements on the German market. Regarding the reasons for the closure of the German case file in respect to the other German banks, the Hearing Officer took the view that the parties had been sufficiently informed through the Commission's press releases which contained a description of the commitments in question, and that the details of the negotiation conducted with individual banks were confidential in character and, for this reason, were not accessible to their competitors.

12. Two parties, Reisebank AG and Commerzbank AG, brought an appeal against the aforementioned letters of the Hearing Officer which they qualified as 'decisions', before the Court of First Instance of the European Communities, together with an application for an injunction suspending the execution of these 'decisions' and ordering the Commission not to continue the procedure initiated against the appellants until the order of the Court and, in particular, not to submit to the Advisory Committee or to the full Commission a draft of the final Commission decision, if it was disadvantageous to the appellants.

13. By order of 5 December 2001 the President of the Court of First Instance rejected the applications of the parties for an injunction. Reisebank AG and Commerzbank AG lodged an appeal against this order. The appeal does not have suspensive effect.

The Hearing Officer therefore concludes that the parties' rights of defence have not been violated. The draft decision contains only objections, in respect of which the parties have been afforded the opportunity of making known their views.

Final report of the Hearing Officer in case COMP/M.2389 — Shell/DEA

(prepared under Article 15 of Commission Decision 2001/462/EC, ECSC of 23 May 2001 on the terms of reference of Hearing Officers in certain competition proceedings (OJ L 162, 19.6.2001, p. 21))

(2003/C 14/03)

(Text with EEA relevance)

The draft decision does not give rise to any observations on the right to be heard, neither with regard to the parties to the concentration nor with regard to interested this parties.

Done at Brussels on 7 December 2001.

Serge DURANDE

Opinion of the Advisory Committee on Concentrations

given at its 104th meeting on 10 December 2001 concerning a preliminary draft decision relating to case COMP/M.2389 — Shell/DEA

(2003/C 14/04)

(Text with EEA relevance)

1. The Advisory Committee agrees with the Commission that the notified operation constitutes a concentration within the meaning of the Article 3(1)(b) of the Merger Regulation, and that the notified operation has a Community dimension as defined by the Article 1(2) of the Merger Regulation.

2. The Advisory Committee agrees with the Commission that, for the purposes of this case, ethylene and toluene constitute the relevant separate product markets.

3. The Advisory Committee agrees with the Commission's assessment on the geographic market, i.e. the pipeline network for ethylene transport and its extensions (ARG+), as well as a European market (EEA and Switzerland) for toluene.

4. The majority of the Advisory Committee agrees with the Commission to jointly assess BP/E.ON and Shell/DEA concentration cases. A minority of the Advisory Committee abstained and one Member State disagrees.

5. The majority of the Committee agrees with the Commission that the notified concentration assessed jointly with the case M.2533 BP/E.ON, leads to the creation of a collective dominant position in the supply of ethylene in the ARG+ as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it. A minority did not agree with the collective dominance finding but agreed with the finding that there would result a loss of competition and a danger of market partitioning. A minority of the Advisory Committee abstains.

6. The majority of the Advisory Committee agrees with the Commission that, taking into account the undertakings offered by the parties, the proposed operation will not lead to the creation of a dominant position in the market for the supply of the ethylene on the ARG+, and hence should be declared compatible with the common market and the functioning of the EEA Agreement. A minority of the Advisory Committee abstains.

7. The majority of the Advisory Committee agrees with the Commission that the proposed entity will not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it as regards toluene. A minority considers that the Shell/DEA operation can be declared compatible without commitments. A minority of the Advisory Committee abstains. One Member State disagrees.

8. The Advisory Committee recommends the publication of its opinion in the *Official Journal of the European Communities*.

9. The Advisory Committee asks the Commission to take into account the remarks and comments made the Advisory Committee.

Prior notification of a concentration

(Case COMP/M.3087 — Penske/DaimlerChrysler/VM Motori JV)

Candidate case for simplified procedure

(2003/C 14/05)

(Text with EEA relevance)

1. On 13 January 2003 the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 [1], as last amended by Regulation (EC) No 1310/97 [2], by which the undertakings Penske Group, through its wholly owned subsidiary Penske Corporation (Penske — USA), and DaimlerChrysler AG (DaimlerChrysler — Germany) acquire within the meaning of Article 3(1)(b) of that Regulation, joint control of the Italian undertaking VM Motori SpA (VM Motori) a subsidiary of the US-based Detroit Diesel Corporation (Detroit Diesel), currently solely controlled by DaimlerChrysler by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— Penske: car dealership, car and truck rental and leasing, fleet management, automobile racing, products for automotive usages,

— DaimlerChrysler: automotive and aerospace industries, financial services, power systems,

— VM Motori: automotive industries.

3. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) No 4064/89. However, the final decision on this point is reserved. Pursuant to the Commission notice on a simplified procedure for treatment of certain concentrations under Regulation (EEC) No 4064/89 [3], it should be noted that this case is a candidate for treatment under the procedure set out in the notice.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax (No (32-2) 296 43 01 or 296 72 44) or by post, under reference COMP/M.3087 — Penske/DaimlerChrysler/VM Motori JV, to:

European Commission,
Directorate-General for Competition,
Directorate B — Merger Task Force,
J-70,
B-1049 Brussels.

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[1] OJ L 395, 30.12.1989, p. 1; corrigendum: OJ L 257, 21.9.1990, p. 13.
[2] OJ L 180, 9.7.1997, p. 1; corrigendum: OJ L 40, 13.2.1998, p. 17.
[3] OJ C 217, 29.7.2000, p. 32.

Prior notification of a concentration

(Case COMP/M.3085 — Schroders Ventures Limited/Premiere)

Candidate case for simplified procedure

(2003/C 14/06)

(Text with EEA relevance)

1. On 13 January 2003 the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 [1], as last amended by Regulation (EC) No 1310/97 [2], by which the Channel Islands undertaking Permira Europe II Managers LP (Permira), controlled by Schroders Ventures Ltd (Channel Islands) acquires within the meaning of Article 3(1)(b) of that Regulation, sole control of the whole of the German undertaking Premiere Fernsehen GmbH & Co. KG (Premiere) by way of acquisition of shares.

2. The business activities of the undertakings concerned are:

— Schroders Ventures Ltd: management, advisory and consultanc services to buy-outs and venture capital fund,

— Premiere: operation of a digital Pay TV platform.

3. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) No 4064/89. However, the final decision on this point is reserved. Pursuant to the Commission notice on simplified procedure for treatment of certain concentrations under Council Regulation (EEC) No 4064/89 [3], it should be noted that this case is a candidate for treatment under the procedure set out in the notice.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax (No (32-2) 296 43 01 or 296 72 44) or by post, under reference COMP/M.3085 — Schroders Ventures Limited/Premiere, to:

European Commission,
Directorate-General for Competition,
Directorate B — Merger Task Force,
J-70,
B-1049 Brussels.

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(1) OJ L 395, 30.12.1989, p. 1; corrigendum: OJ L 257, 21.9.1990, p. 13.

(2) OJ L 180, 9.7.1997, p. 1; corrigendum: OJ L 40, 13.2.1998, p. 17.

(3) OJ C 217, 29.7.2000, p. 32.

Non-opposition to a notified concentration

(Case COMP/M.3007 — E.ON/TXU Europe Group)

(2003/C 14/07)

(Text with EEA relevance)

On 18 December 2002, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EEC) No 4064/89. The full text of the decision is only available in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

— as a paper version through the sales offices of the Office for Official Publications of the European Communities (see list on the last page),

— in electronic form in the 'CEN' version of the CELEX database, under document No 302M3007. CELEX is the computerised documentation system of European Community law.

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