

**SURVEYS OF THE MEMBER STATES'
POWERS TO INVESTIGATE AND
SANCTION VIOLATIONS OF NATIONAL
COMPETITION LAWS**



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Surveys of the Member States' Powers to Investigate and Sanction Violations of National Competition Laws

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SURVEYS OF THE MEMBER STATES' POWERS TO INVESTIGATE AND SANCTION VIOLATIONS OF NATIONAL COMPETITION LAWS

Introduction

This report summarizes the findings from two surveys of the national competition laws of the Member States and several third countries (Canada, Mexico, Switzerland and the United States), which were prepared during the period from October 1994-March 1995. One survey compares the powers of the competition authorities of the EU, the Member States, and the third countries to learn of and investigate potential violations of the competition laws; the other compares the authorities' powers to impose sanctions.

The research was done by a group of young lawyers and economists working as stagiaires at DG IV,¹ who gathered responses to questionnaires,² relying on national competition laws³, annual reports, secondary sources, and telephone interviews with national authorities. Their findings were subsequently reviewed by national experts or officials of DG IV.

The **Investigations Survey** showed that enforcement officials may learn of violations through voluntary notifications of the parties concerned, complaints from current or former employees, competitors, consumers or customers, information from other government authorities, press reports, or sectoral or other studies. The survey results show that, in general, the EU and many of its Member States substantially rely on **notifications** to learn of potentially violative restrictive agreements. In contrast, none of the third countries requires notification of restrictive agreements, relying instead on other means to learn of possible violations. However, merger notification is required under the EU system as well as the systems of both Member States and third countries which have merger control legislation.

Eleven of the fifteen Member States have notification systems with respect to **restrictive agreements**. The EU system, requiring notification of restrictive agreements only if a negative clearance or exemption is sought, has been substantially followed by seven of the Member States, six of which adopted or amended their competition law since 1989. One other Member State requires notification of only a few specific categories of agreements which can be exempted. Moreover, notification requirements are substantially determined by whether the competition law is based on the abuse control principle or the prohibition principle. Four Member States whose laws are based primarily on abuse control require notification of restrictive agreements without regard to whether an exemption or negative clearance is sought. Three Member States do not require notification of restrictive agreements.

Similarly, like the EU, seven of the twelve Member States with merger control statutes require **premerger notification** for mergers above certain thresholds and impose waiting periods during which the concentration cannot be consummated, or if it is, subsequently may be subject to divestiture. One Member State requires premerger notification, but imposes no

¹ *Appendix 1 contains a list of the names of the stagiaires who did the research for each Member State.*

² *Appendix 2 contains the questionnaires for both surveys.*

³ *Appendix 3 contains a list of citations for the national competition laws of each of the Member States and third countries.*

waiting period. Three other Member States make premerger notification optional; one may order it under certain conditions.

Like the EU, which has a **form** for the notification of restrictive agreements and one for the notification of mergers, eight Member States with notification obligations require that their own form be used. Most of the other Member States' statutes specify the information which should be provided in a notification.

Other than notifications, the predominant source of information about potential violations relied upon by the Member States is complaints from present or former employees, consumers, customers or others. They also rely to a limited extent on information supplied by EU and local government authorities. Reliance on sectoral or market studies is very limited.

None of the third countries included in the survey require notification of restrictive agreements, but all require notification of mergers meeting certain thresholds. In the US, officials rely on complaints, studies, and press reports to learn of violative restrictive agreements.

Competition enforcement officials need strong powers to **investigate** not only notified activities, but also potential violations which they learn of through other means. The need for strong investigatory tools is especially acute with respect to cartels. The investigations survey reveals that the Member States have stronger investigatory powers than the EU in two important respects: many of them have powers to direct their investigatory efforts against individuals and sanction them for failure to cooperate, including imprisonment for failure to obey a court order; and to use police powers, including the possibility to obtain search warrants, to support their efforts to make on-site inspections.

The European Commission has two main tools for obtaining evidence in an investigation: information requests and on-site inspections. Only undertakings or associations of undertakings can be the subject of the Commission's investigations, since it has no powers against the individual. The Commission may fine a party which refuses to cooperate but has no power to use force. However, it may turn to Member State authorities for their assistance in conducting on-site inspections, which they are obliged to give. It has no power to compel oral testimony, demand information from individuals, or impose fines on them.

Member State authorities generally have more extensive powers to conduct investigations than their EU counterparts, mainly due to their ability to compel cooperation from individuals and their access to the state's police powers. Enforcement authorities in all Member States may obtain information from **undertakings**. Twelve Member States allow investigation requests to be directed to **individuals** who are not undertakings, and fourteen allow request to **third parties**.

National enforcement authorities in all Member States can **question individuals orally** and **request documents**; in all but France, they can issue **written questions**; and in all but the UK, they can conduct **on-site inspections**. Nine Member States require that a warrant be obtained prior to conducting an on-site inspection; three others do not require such order for inspection of business premises. Three Member States allow the search of a dwelling, but only with a warrant. Eight Member States provide for police assistance in the execution of an on-site inspection.

The force of the Member State systems also is derived from their ability to impose sanctions for failure to cooperate in an investigation. Seven Member States provide for **imprisonment** of individuals who have obstructed an investigation following contempt proceedings, with maximum terms ranging from six weeks to two years. In addition, all Member States provide **fin**es for giving false or misleading information in a notification, and/or failure to cooperate in an investigation. Such fines may be provided in the competition law or the penal law, or both, with a maximum as high as ECU 100.000.

The US system for information-gathering, which is based on its adversarial regime, is far stronger than the systems in both the EU and the Member States. In the US, more forceful discovery tools are available, and they are backed by the full powers of the courts. Prior to initiating a lawsuit, government enforcement officials may employ various tools of investigation, including civil investigative demands, administrative subpoenas, and requests to file special reports in civil cases, and the grand jury system in criminal cases (which allows the prosecutor to interrogate witnesses under oath so that he/she may determine whether probable cause exists that a criminal violation of the laws has been committed and a lawsuit should be initiated). After a lawsuit is filed, a full arsenal of discovery tools is available, including document requests, written interrogatories, and depositions (oral examination of witnesses). All responses are under oath. A party may be held subject to sanctions for perjury. If the subject of such discovery requests (whether an undertaking, association of undertakings, individual or third party) fails to provide full and complete answers, he might be compelled by the court to do so, and failure to comply would be punishable as contempt of court. In addition, prosecutors may offer immunity to witnesses to obtain testimony which is useful for gathering sufficient evidence to prove criminal violations, such as bid-rigging agreements made by cartels. These differences between the US system and the European systems reflect the differences in the strength of the antitrust tradition.

The Sanctions Survey demonstrates that the EU and most Member States are similar in relying substantially on **administrative sanctions** to ensure compliance with competition laws. The EU and all Member States provide for **prohibition orders** against enterprises regarding restrictive practices and abuses of a dominant position. The EU and all eleven Member States which have concentration laws provide for prohibition orders regarding concentrations. The EU and seven of those eleven Member States provide for divestiture of violative concentrations already consummated.

Administrative fines, which are provided for under EU law for substantive violations of Articles 85 and 86, are less universally accepted by the Member States. In particular, eleven of the fifteen Member States provide for fines against substantive violations of laws against restrictive practices and abuses of a dominant position. EU law does not provide for fines for substantive violations of the Merger Regulation, but 5 of the 11 Member States with concentration laws do provide for such fines.

The EU system only allows for the imposition of sanctions against undertakings and associations of undertakings. In contrast, fines may be imposed on the individual in six Member States for substantive violations.

Criminal sanctions do not exist in the EU competition law scheme, and only play a small role in that of the Member States. Only Austria, France and the Netherlands provide criminal sanctions for restrictive practices and abuses of a dominant position; no Member States provide criminal sanctions for substantive violations of the law regarding concentrations.

Criminal sanctions are possible, mainly against individuals, for obstructions of investigations or failures to comply with orders in four Member States.

The profile of third countries is similar to that of the EU and the Member States with respect to administrative sanctions, except that Canadian and US law rely on the courts to issue orders imposing sanctions. All third countries studied provide for prohibition orders regarding restrictive business practices, abuses of a dominant position, and concentrations; three of the four provide for fines for restrictive business practices and abuses of a dominant position; and three of them provide for fines for concentrations.

However, the profile for third countries differs considerably from that of the EU and the Member States regarding criminal sanctions. Canada, Mexico and the US all provide for criminal sanctions, mainly to combat hard-core, per se antitrust offenses, such as price fixing, market allocations and bid rigging.

Statutory **limits on sanctions** are set in the competition laws of the EU and thirteen Member States, many of which are tied to turnover. The limits apply to substantive violations, procedural violations, and contempt. Limits of various types also exist in third countries.

Information about **sanctions actually imposed** is somewhat incomplete, as printed sources are out of date and only some national authorities provided more up to date information. With these limitations, it is apparent that the highest fines have been imposed by the Commission (ECU 248 million in Cement, 132.15 million in Cartonboard, 117 million in Poutrelles, and 75 million in Tetrapak). Of the Member States, the highest fines have been imposed in Germany (ECU 119.2 million), followed by France (ECU 22.8 million), Italy (ECU 1.8 million), the Netherlands (ECU 1.0 million), Spain (ECU 900 thousand), Greece (ECU 38.9 thousand), Belgium (ECU 2.5 thousand) and Denmark (ECU 1.3 thousand). The highest fine imposed in the United States approach those imposed in Cement (ECU 221.4 million). These data give no indication of the percentage of cases brought in which fines are imposed. No fines have ever been imposed in Austria, Finland and Sweden.

In the EU, sanctions are imposed by the Commission. In contrast, sanctions are imposed by **independent** authorities in 5 of the Member States. In the others, sanctions are imposed by the **ministries** or individuals appointed by them or the cartel court.

The Court of First Instance, and ultimately the Court of Justice, have broad discretion to review the Commission's sanction decisions in the EU. In thirteen Member States, decisions regarding sanctions are subject to judicial review; in Ireland and Luxembourg, such sanctions are imposed by the courts subject to the normal appellate procedures. Sanctions must be court-ordered in Australia, Canada, and the United States (except for FTC orders); court review of sanctions, whether imposed judicially or administratively, is available in all thirteen countries.

The results of the study are presented in greater detail below, and in the attached Tables.

INVESTIGATIONS SURVEY

I. HOW AUTHORITIES LEARN OF POTENTIAL VIOLATIONS

The notification requirements and other means for learning of violations of the competition laws is presented in Table IA, and actions taken by notified authorities following receipt of a notification is presented in Table IB.

Notification requirements

Restrictive Agreements

European Union : In the European Union, a party seeking an exemption pursuant to Art. 85(3) of an agreement, decision or concerted practice prohibited by Art. 85(1) must file a notification, except in certain limited circumstances. Similarly, a party seeking a negative clearance must file an application. If an exemption is subsequently denied, fines may not be imposed with respect to acts occurring after notification but before the Commission's decision on the notification.

Member States : The notification requirements for restrictive agreements are similar to those of the EU - that is, requiring notification only when an exemption and/or negative clearance is sought - in 7 of the Member States (Belgium, Finland, Greece, Ireland, Portugal, Spain, and Sweden), 6 of which adopted or amended their competition laws since 1989. However, only Sweden and Belgium have the same rules regarding imposition of fines after notification. No suspension of fines is available in Finland, Greece, or Portugal. Irish competition law does not provide for any fines; however, if a private action is brought, damages may not be awarded for the period covered by a "certificate", which is equivalent to a negative clearance under EU competition rules.

In Germany, only those specified categories of agreements which can be exempted from the general prohibition must be notified.

Four of the Member States (Austria, Denmark, the Netherlands and the UK), all of whose systems are based primarily on abuse control, require notification of restrictive agreements (which each defines somewhat differently as shown in the endnotes to Table I), without regard to whether an exemption or negative clearance is either available or sought. Notifications are required in order to provide authorities with the information needed to determine whether an abuse exists.

Three of the Member States (France, Italy and Luxembourg) do not require notification of restrictive agreements. In France and Luxembourg, no notification system exists for restrictive agreements; enforcement authorities rely on other means to learn of violations. In Italy, notification is entirely voluntary.

Third Countries : None of the third countries included in the study requires notification of restrictive agreements.

Concentrations

European Union : In the European Union, mergers meeting specified thresholds (aggregate worldwide turnover of all undertakings greater than ECU 5 billion and Community-wide turnover of each of at least two of the undertakings greater than ECU 250 million, unless each undertaking achieves more than 2/3 of its aggregate Community-wide turnover within one Member State) must be notified before the merger is consummated.

Member States : Merger notification with a waiting period, during which an investigation is made and the merger should not be consummated for mergers above certain thresholds is required in 7 of the 12 Member States (Austria, Belgium, Germany, Greece, Ireland, Portugal and Sweden) with merger control statutes. In Italy, premerger notification is obligatory for mergers exceeding specified thresholds, but no waiting period applies; the authority may order suspension of the merger at any point until the investigation is completed.

Notification of concentrations is optional in France, Spain, and the UK, and may be ordered in Finland if a dominant firm or a firm in a regulated industry is involved.

Denmark, Finland, Luxembourg and the Netherlands do not have merger control statutes and thus do not require premerger notification.

Third Countries : Three of the third countries included in the study (Canada, Mexico and the US) currently have premerger notification requirements for mergers exceeding certain thresholds. Under the new Swiss draft competition code, merger notification will be required.

Notification Forms

European Union : Regarding restrictive agreements, applications for a negative clearance and notifications for exemption must be filed on form A/B. Regarding concentrations, notifications must be filed on form CO.

Member States : Eight of the Member States with notification systems require the use of a form (Belgium, Greece, Ireland, Italy, the Netherlands, Spain, Sweden and the UK); in two of these (Sweden and the UK), a form must be used both for restrictive agreements and concentrations; in four (Belgium, Greece, Ireland, and the Netherlands), the form is used only for restrictive agreements; and in one (Italy), the form is used only for concentrations. Spain provides a notification form even though all notifications are optional. In five of the Member States which have no form, the information which should be provided is specified in the law; in Finland, a party can request that the authority provide it with the questions which it should answer.

Third Countries : Only the US supplies a form for premerger notifications. In Canada and Mexico, the information required is specified in the statute. Currently, the new draft Swiss competition code does not contain a notification form, but this might be included in an implementing regulation.

Other means used to discover violations

European Union : Other than notifications, the Commission relies on both formal and informal complaints by third parties, such as consumers and competitors, information from other authorities, questions from Members of Parliament, press reports, and sectoral studies, to discover violations.

Member States : All of the Member States except Ireland use employee or ex-employee, consumer, competitor, or other complaints as an important source for discovery of potential violations, especially with regard to cartels. Danish authorities only rarely use means other than notifications to discover violations. The Irish Competition Authority has no direct role in the enforcement of Irish competition rules. Enforcement is mainly through private court actions. The responsible minister also may file an action in court, although not for damages.

National authorities appear to rely to a limited extent on the EU as a source of information about potential violations. Only Austria, France and Ireland did not indicate that they relied on such information. Most authorities also appear to rely on county or local sources to a more limited extent.

Reliance on market or sectoral studies appears to be quite limited, as only four Member States mentioned this as a source of information (Austria, France, Italy and Portugal). Similarly, only very few national authorities mentioned press reports as a source (Germany, Greece and the UK).

Third Countries : Authorities in all four third countries included in the study rely on consumer, competitor or other complaints to learn about violations. Canadian officials receive complaints almost daily. Moreover, Canadian law provides that any six Canadian citizens may address a formal request for an inquiry to the Director of Investigation and Research. Mexican law and the new draft Swiss code explicitly provide that complaints may be considered by the authority.

In Canada, the Minister of Consumer and Corporate Affairs may require an investigation to be done of a specific case by competition officials.

In the US, authorities also rely on reports in major trade journals and newspapers, sectoral studies undertaken by the agencies' attorneys or economists, an inquiry from a concerned senator or representative of the US Congress, and monitoring private antitrust litigation.

Authority 's responsibilities upon receipt of notification

Restrictive Agreements

European Union : Article 89 of the EC Treaty requires the Commission to investigate cases of "suspected infringements" of the principles laid down in Articles 85 and 86.⁴ Article 14 of Regulation 17 provides that the Commission "may undertake all necessary investigations into undertakings and associations of undertakings" in performing its duties under Treaty Articles 87 and 89. Following an investigation, and after consulting with the Member State Advisory Committee, Article 89 requires the Commission to decide whether an infringement exists and, if so, the Commission must "record such infringement of the principles in a reasoned decision," "propose appropriate measures to bring it to an end," and may authorize the Member States to take the necessary measures to remedy the situation. However, neither the Treaty nor Regulation 17 requires the Commission to take a decision on a request for an exemption.

Member States : Investigations are optional in all 7 of the Member States which require notification in order to obtain an exemption or negative clearance (Belgium, Finland, Greece, Ireland, Portugal, Spain, and Sweden). In Belgium and Sweden, each notification is investigated to some extent. In Ireland, the competent authority has no duty to investigate upon receipt of notification. However, a bill currently being considered by the Irish parliament would impose a duty on the Director of Competition Enforcement (a member of the Competition Authority) to investigate any restrictive practices or abuses of a dominant position that he suspects to have occurred, and to recommend to the Competition Authority, as to whether to bring an enforcement action in the courts.

In Germany, officials have discretion to investigate.

Of the four Member States which require notification of restrictive agreements (Austria, Denmark, the Netherlands and the UK), the Director General of Fair Trading in the UK is required to bring proceedings before the Restrictive Practices Court with respect to each agreement registered, with certain exceptions. To determine whether one of the exceptions applies, the DGFT may require further information. In Denmark and the Netherlands, a notification will not generally trigger an investigation. However, in Denmark, if the notified transaction facially constitutes an obvious infringement, an investigation would be initiated with the goal of reaching an agreement to modify the violative provisions and if this does not lead to an acceptable result, an order may issue. In the Netherlands, the party may apply for an exemption from a "generic prohibition," which would be investigated.

Of the three Member States which do not require notification of restrictive agreement (France, Italy and Luxembourg), investigation of a notified restrictive agreement is required in Italy if an infringement is suspected. In the other two, officials have discretion to investigate.

Third Countries : Since these countries do not require notification of restrictive agreements, there are no inspection requirements with respect to notifications.

⁴

In Automec v. Comm'n, Judgment of the Court of First Instance, Sep. 18, 1992, II ECR 2223 ("Automec II") the court held that the Commission has the right to decline complaints by private parties that raise no significant Community interest where...

Concentrations

European Union : Regarding concentrations, the Merger Regulation requires the Commission to examine notifications as soon as they are received, and to decide whether the notified concentration meets the minimum thresholds for Community competence, and whether it "raises serious doubts" as to its compatibility with the common market - that is, as to whether it "create[s] or strengthen[s] 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." If serious doubts are raised, then the Commission must initiate proceedings, involving a more in-depth investigation which must be completed within strict time limits.

Member States : Of the eight Member States requiring premerger notification (Austria, Belgium, Germany, Greece, Ireland, Italy, Portugal, Sweden) an investigation is required of all notified concentrations in four of them (Belgium, Germany, Spain, and Sweden). In Austria, authorities have no responsibilities to investigate unless requested to do so by government authorities, interested parties, or other parties specified in the competition law. In Ireland, the minister who receives the notification must decide whether to request an investigation or approve the notified concentration within specified time limits. In Italy, an investigation is required only if the authority suspects that a concentration violates the law. In Portugal, the Direcção-General de Concorrência e Precos is responsible to "instruct the case," which may include investigation and hearing, followed by making a recommendation to the Ministry.

Third Countries : In Canada, Mexico and the United States, an initial decision must be made, based on the information filed, whether to request further information during a specified waiting period. If further information is requested, the waiting period is extended.

In Switzerland, investigation is optional unless it has been requested by the civil court, Competition Commission, or Federal Department of Economic Affairs. Under the new draft code, it will be required to assess the effects on competition of all notified concentrations.

II. INVESTIGATIONS

The powers of investigation are presented in Table IIA, and the recipients of investigation requests and powers to compel or encourage their responses is presented in Table IIB.

Authority's investigation powers

European Union : Regulation 17 and the Merger Regulation set forth the Commission's tools for investigation. In investigating cases under Articles 85 and 86 and under the Merger Regulation, the Commission may obtain all necessary information from undertakings, associations of undertakings, and the Member States. The Commission may obtain information either through a request for information, or through an on-site inspection. In performing an on-site inspection, Commission officials may examine books and other business records, take copies, and ask for oral explanations on the spot.

Initially, responses to information requests and submission to on-site investigations is voluntary. However, if the undertaking refuses to cooperate, the Commission will issue a

decision, which is an order from the Commission to the undertaking requiring it to cooperate in the investigation. Sanctions (described below) may be imposed if it does not cooperate. Finally, the Commission may rely on the assistance of Member State authorities to complete the investigation.

Member States : The enforcement authorities of the Member States are vested with broad investigatory powers.

Document Requests : In all Member States, enforcement authorities are empowered to request documents. In the Netherlands, only the Minister has power to inspect documents, and only when demonstrable circumstances exist raising doubts about whether a restrictive agreement or dominant position is in conflict with the general interest.

Written Interrogatories : In all Member States except France, authorities may issue written interrogatories.

On-Site Inspections : In all Member States except the UK, competition enforcement officials are empowered to conduct on-site inspections.

In three Member States (Finland, France, and Greece), on-site inspection of business premises may be made without a warrant. In France, however, a warrant is required to conduct search for items not in plain view. In Italy, on-site inspections can be arranged for the limited purpose of viewing and copying corporate documents.

In nine Member States (Austria, Denmark, France, Germany, Ireland, Luxembourg, the Netherlands, Portugal, and Sweden), on-site inspection of business premises may be made only under the authority of a warrant or permission from a government minister. In Austria, the cartel court may order an on-site inspection. In Germany, although a court order is generally required, the search may be done without a warrant when there is danger in delay. In Luxembourg, the written order of the Minister is required (rather than a warrant). Similarly, in the Netherlands, the Minister can make on-site inspections when demonstrable circumstances exist raising doubts about whether a restrictive agreement or dominant position is in conflict with the general interest.

In Belgium, on-site inspection of business premises can be made following issuance of mandate by the President of the Conseil de la Concurrence.

In Spain, on-site inspections can be made either with the consent of the party or pursuant to a judicial order. In practice, these inspections have been made with the party's consent, and never pursuant to judicial order.

In three Member States (Belgium, Germany, and Greece), the search of a dwelling is possible only with a warrant and observing constitutional guarantees. In Belgium, dwellings of directors, administrators and financial officials of an undertaking under investigation may be searched. Under the German criminal law, the search of dwellings is permissible.

The police may be requested to assist in the execution of an on-site search in eight Member States (Belgium, Denmark, Finland, Germany, Italy, Luxembourg, the Netherlands, and Portugal). However, in Denmark, this has never been done. In Germany and Portugal, the police always accompany officials to make on-site inspections.

Oral Questioning of Individuals : In all Member States, competition law enforcement officials may question individuals. In France, questioning must be based on a request of the Ministre de l'economie or the Conseil de la Concurrence, then a judicial authorization. In the UK, the Director General of Fair Trading has the power to require individuals or firms to provide details of any unregistered agreements to which they are a party, but only if he has reasonable cause to believe an agreement exists.

Criminal Investigative Powers : Apart from the possibility for police assistance in conducting an on-site inspection, none of the Member States except Germany have criminal investigatory powers for conducting investigations of possible violations of the competition laws. In Germany, criminal procedures are followed if the remedy sought is the imposition of fines.

Third Countries : The investigatory powers under US law, which are based on an adversarial system, are far more extensive than those of the EU or the Member States. In civil cases, government enforcement authorities may conduct all four types of investigation, and private plaintiffs have access to all such discovery tools except on-site inspections. Prior to filing a complaint, government enforcement agencies may issue civil investigative demands, which may compel the production or on-site inspection of documents, require answers to written interrogatories, and compel sworn testimony. Following the filing of a complaint, both government enforcers and private plaintiffs have broad discovery powers as provided in the Federal Rules of Civil Procedure. Discovery tools include deposition upon oral examination or written questions, written interrogatories, production of documents or things or permission to enter upon land or other property, for inspection and other purposes, physical and mental examinations, and requests for admission. The procedures followed for on-site inspections in the US differ, in practice, from those in the EU. Rather than conducting an unannounced search, investigators schedule an appointment to appear on-site, and responding parties arrange for the on-site inspection of original documents.

A party who refuses to cooperate may be ordered to do so by the court. Failure to comply with a court order constitutes contempt, with sanctions as described below.

In criminal cases, the Justice Department may initiate an investigation with the impanelling of a grand jury. A subpoena may issue, requiring the production of documents and materials and commanding oral testimony before the grand jury without the presence of judge or legal counsel. A search warrant also may be obtained. Investigators from the FBI may be used, who may utilize such tools as wiretaps and "plants" (where a government official may be secretly placed to work within an organization to observe whether illegal practices are occurring).

In Canada, as in the US, both civil and criminal investigations are possible. Investigation powers are similar to those in the US, although in practice, these powers are rarely used since parties generally cooperate in providing information. In civil cases, a judge may order responses to written interrogatories or to a request to produce documents. A judge also may authorize competition enforcement officials to enter and search premises for records when reasonable grounds exist to believe that this is necessary, or may order a person to appear and submit to oral examination. A court order is not necessary if there is risk of loss or destruction of evidence. Failure to comply with court orders is punishable as contempt, as discussed below.

In Mexico, the Competition Commission "may request the necessary information."

Recipients of requests

European Union : In the European Union, the Commission may obtain all necessary information from the Member States, undertakings, and associations of undertakings. However, it may not direct its investigation requests against individuals. Moreover, no individual is responsible to provide the answers on behalf of the undertaking or association of undertakings.

Member States : Enforcement authorities in all of the Member States may obtain information from undertakings. In Germany, the law indicates which individuals are responsible for providing information on behalf of undertakings, as follows: the owner of the undertaking, or such representatives as provided by law. In Greece, the authorized representative is the individual responsible. In Portugal, the legal representatives of the undertaking are responsible. In the UK, individuals named in the investigation request or, if not named, a director, manager, secretary or other officer of a company, officer of a trade association, or individual or member of a partnership who carries on business may be held personally responsible.

Authorities in all Member States except Belgium, Finland and Germany may obtain information from individuals who are not undertakings. In Finland, authorities may direct their investigation requests only to those individuals deemed to be undertakings because they offer for sale, buy, sell, etc. goods on a professional basis.

Enforcement authorities in all Member States except Austria may direct their requests for information to third parties. In Denmark, such requests would be made only in conjunction with market surveys. In Germany, such requests can be made only to third parties which are undertakings or associations of undertakings, unless criminal procedures are being followed in which case third party individuals also may be questioned.

Third Countries : In the United States and Canada, an individual or corporation over which the court has personal jurisdiction is subject to compulsory process and can be compelled to produce information and documents within their possession. Non-party witnesses also can be compelled to produce documents and to submit to a deposition upon oral examination.

In Mexico and Switzerland, undertakings, individuals and third parties may be the recipients of investigation requests.

Tools available to encourage recipients to respond

Favourable Treatment

European Union : If an undertaking displays a genuinely cooperative attitude which facilitates the Commission's fact finding by providing unsolicited assistance to the Commission, it may receive favorable treatment in the imposition of sanctions. Such assistance may take the form of drawing the Commission's attention to an infringement in which it is or was a participant, supplying information which supports evidence already in the Commission's possession, or supplying the Commission with information without which the Commission would have had difficulty establishing the existence of a cartel.

Member States : Only one Member State, Germany, indicated that it may give favorable treatment to individuals who cooperate in an investigation; and only Finland and Portugal indicated that they offer favorable treatment to undertakings which cooperate. Spain may impose higher fines than average fines on individuals and undertakings who fail to cooperate in an investigation.

Third Countries : In 1991, the Canadian Bureau of Competition Policy initiated a favourable treatment program which provides incentives for corporations voluntarily to disclose their participation in conspiracy and bid-rigging offenses prior to the Bureau's knowledge of such matters. The program thereafter was expanded to include individuals and to cover a broader range of criminal offenses under the Competition Act. The Attorney General has discretion to decide what favourable treatment to offer, normally after consultation with the Director. Moreover, immunity from prosecution can be offered under Canadian criminal law under certain conditions. The Attorney General can stay criminal proceedings, assure immunity against future prosecution, or provide "use" immunity (under which evidence provided by the witness cannot be used as an admission of guilt in a subsequent prosecution).

In August 1993, the United States announced a corporate leniency policy, and in August 1994, a leniency policy for individuals who report criminal antitrust activity of which the Justice Department had not been aware. Under the corporate leniency policy, no criminal charges will be lodged against officers, directors and employees who come forward with their corporation with information about criminal antitrust activity and confess. Under the individual leniency policy, individuals may confess on their own behalf to seek leniency for reporting illegal antitrust activity.

Sanctions

European Union : Regarding restrictive agreements, the Commission may impose fines of up to ECU 5.000 for supplying incorrect or misleading information in an application or notification, in response to a request for information, for supplying incomplete books or records or refuse to submit to an investigation which has been ordered by decision. Periodic penalty payments of up to 1.000 per day may be imposed to compel undertakings or associations of undertakings to supply complete and correct information which has been requested by decision or to submit to an investigation which it has ordered by decision. However, the effectiveness of this penalty scheme to assist in the investigation process is questionable, as the mechanism for imposing such penalties is cumbersome and time-consuming, and the penalty amounts are not considered by many to be high enough to encourage cooperation.

Regarding mergers, fines of ECU 1.000-50.000 may be imposed for intentionally or negligently failing to notify a concentration, or supplying incorrect or misleading information or incomplete documents, and periodic penalty payments of up to ECU 25.000 per day of delay in supplying information requested or submitting to an ordered investigation.

Member States : All of the Member States impose fines for providing false or misleading information in a notification, and/or failure to cooperate in an investigation. In Denmark, fines have been imposed on very few occasions, as the party in question normally will produce the requested information after negotiating with the Competition Council.

The level of fines for obstruction of an investigation is specified in some Member States, as follows: Belgium, BF20.000-1million (ECU 512-25.610); France, FF 50.000 (ECU 7.595); Germany, penalty payments of up to DM 2.000 (ECU 1.055) and criminal fines of up to DM 50.000 (ECU 26.370); Greece, DRG 5-30 million (ECU 16.890-101.300) for non-notification, DRG 1.000-1 million (ECU 3-3.378) for obstruction of an investigation, and penalties of at least DRG 1 million (ECU 3.378) for the first offense, twice that for succeeding offenses; Ireland, criminal fines of up to Ir£1.000 (ECU 1.247); Italy, up to IL 5 million (ECU 24.910) for refusal or failure to supply information or documents, and up to IL 100 million (ECU 49.810) for supplying incorrect or misleading information; Luxembourg, LF 2.505 to 10.000 (ECU 64-256); the Netherlands, up to NLG 50.000 (ECU 6.681) for individuals, and up to NLG 100.000 (ECU 13.360) for undertakings; Portugal, Escudos 100.000-10 million (ECU 510-51.020); Spain, Ptas 50.000-1 million (ECU 303-6059), or Ptas 150.000 (ECU 909) per day.

A prison sentence also may be imposed for obstruction of an investigation in Finland (six months maximum), France (six months maximum); Germany (six weeks maximum); Greece (three months minimum); Ireland (one year maximum); the Netherlands (six months); UK (two years).

Third Countries : In the US, failure to comply with the Hart-Scott-Rodino premerger notification requirements is punishable by court-imposed civil penalties of up to US\$10.000 (ECU 8.009) per day. For contempt of court, fines and imprisonment of up to 18 months may be imposed. Sanctions under the Federal Rules of Civil Procedure for failure to meet discovery obligations is punishable by fines and could result in entry of a default judgment. Individuals who willfully destroy, alter, conceal or manufacture documents or other evidence are subject to fines and prison sentences of up to five years. Finally, individuals who knowingly give false testimony under oath are guilty of perjury and subject to fines and prison sentences.

In Canada, criminal fines of up to C\$5.000 (ECU 2.852) and imprisonment for up to two years may be imposed against individuals or corporations which obstruct an investigation. An individual who alters any record required to be produced and for which a warrant has been issued may be liable for criminal fines of up to C\$50.000 (ECU 28.520) or imprisonment for up to five years.

In Mexico, a fine of up to 7.500 times the general minimum wage may be imposed for making false statements or providing false information, and up to twice that amount for repeated offenses. A fine of up to 100 thousand times the general minimum wage may be imposed for failure to notify a concentration.

In Switzerland, criminal fines of up to SFr 20.000 (ECU 12.480) may be imposed for failure to comply with requirements to provide information. Under the new draft code, administrative fines up to SFr 100.000 (ECU 62.380) would may be imposed for failure to provide required information.

Court powers in investigation process

European Union : Commission decisions imposing fines for obstruction of an investigation are subject to review by the Court of First Instance and the Court of Justice. The community courts play no other role in the investigation process.

Member States : As discussed above (see section on On-site inspections, page 14), courts may issue warrants to permit on-site inspections or to permit other types of investigation in nine Member States (Austria, Belgium, Denmark, France, Germany, Ireland, Luxembourg, Portugal, Sweden). In Austria, the Cartel Court, which is the enforcement authority, may issue warrants to permit on-site inspections. In addition, in Greece, the court may order police intervention to assist officials obstructed in the exercise of their duties of investigation or denied access to information.

Judicial review of fines is available in thirteen Member States which provide for fines; in Ireland and Luxembourg, fines are court-imposed and subject to the normal appellate procedure.

In Spain, the courts have power to conduct a new investigation in reviewing decisions of the TDC or the Government. Similarly, in the UK, the RPC may summon witnesses for examination by the parties and take the final decision in a case.

Third Countries : In the US, all of the powers of discovery discussed above are reinforced by the courts. Thus, courts may issue orders to comply with discovery requests. Failure to satisfy such orders constitutes contempt, which the court may sanction as discussed above. Courts also may issue warrants and subpoenas. Similarly, in Canada, courts may impose fines, prison sentences, issue warrants and subpoenas. In Mexico, courts play no role in the process.

TABLE IA.
NOTIFICATIONS AND OTHER MEANS OF LEARNING OF VIOLATIONS

EU/Member State	Notification Requirement		Notification Form (IB)	Other Means to Discover Violations	
	Restrictive Agreements (IA1)	Concentrations (IA2)		Complaints (IF)	Information from Other Government Units (IF)
European Union	no ¹	yes ²	yes ³	yes	yes
Austria	yes ⁴	yes ⁵	no ⁶	yes ⁷	no ⁸
Belgium	yes ⁹	yes ¹⁰	yes	yes ¹¹	yes ¹²
Denmark	yes ¹³	no ¹⁴	no ¹⁵	yes ¹⁶	yes ¹⁶
Finland	no ¹⁷	no ¹⁸	no ¹⁹	yes	yes ²⁰
France	no ²¹	no ²²	no ²³	yes ²¹	no
Germany	yes ²⁴	yes ²⁵	no ²⁶	yes ²⁷	yes ²⁸
Greece	yes ²⁹	yes ³⁰	yes ³¹	yes	yes ³²
Ireland ³³	no ³⁴	yes ³⁵	yes ³⁶	n/a ³⁷	n/a
Italy	no ³⁸	yes ³⁹	yes	yes ⁴⁰	yes ⁴¹
Luxembourg	no	no ⁴²	no	yes ⁴³	yes
Netherlands	yes ⁴⁴	no ⁴⁵	yes ⁴⁶	yes ⁴⁷	yes ⁴⁸
Portugal	no ⁴⁹	yes ⁵⁰	no ⁵¹	yes ⁵²	yes ⁵³
Spain	no ⁵⁴	no ⁵⁵	yes	yes	yes
Sweden	yes ⁵⁶	yes ⁵⁷	yes ⁵⁸	yes	yes ⁵⁹
United Kingdom	yes ⁶⁰	no ⁶¹	yes ⁶²	yes ⁶³	yes ⁶⁴
Third Country					
Canada	no	yes ⁶⁵	no ⁶⁶	yes ⁶⁷	yes ⁶⁸
Mexico	no	yes ⁶⁹	no ⁷⁰	yes ⁷¹	
Switzerland ⁷²	no	no ⁷³	n/a	yes ⁷⁴	no
USA	no	yes ⁷⁵	yes	yes ⁷⁶	yes ⁷⁷

FOOTNOTES TO TABLE IA

1. Regulation 17 requires notification of agreements, decisions and concerted practices prohibited by Art. 85(1) of the Treaty, and for which the party seeks an exemption pursuant to Art. 85(3). However, it sets forth specific situations in which notification is not required, but optional. Moreover, pursuant to Art. 2, parties may submit an application for certification that there are no grounds under Art. 85(1) or 86 for action on the Commission's part with respect to an agreement, decision or practice. Fines may not be imposed with respect to acts falling within the limits of the activity in the notification and taking place after notification but before the Commission renders its decision with regard to Art. 85(3). (Commission Reg. 17/62 of 6 February 1962, Arts. 4, 15)
2. The Merger Regulation requires notification of mergers meeting specified thresholds (aggregate worldwide turnover of all undertakings greater than ECU 5 billion, and Community-wide turnover

of each of at least two of the undertakings greater than ECU 250 million, unless each undertaking achieves more than 2/3 of its aggregate Community-wide turnover within one Member State, (Council Regulation 4064/89 of 21 December 1989 (Merger Regulation), Arts. 1, 4)

3. Regulation 17 requires that applications for negative clearance under Reg. 17, Art. 2, and notifications for exemption under Reg. 17, Art. 4, shall be submitted on Form A/B. (Commission Reg. 27/62 of 3 May 1962, Art. 4). The implementing regulation for the Merger Regulation requires that notifications under the Merger Regulation be submitted on Form CO (Commission Regulation (EC) No 3384/94 of 21 December 1994 on the notifications, time limits and hearings provided for in Council Regulation (EEC) No 4064/89 published in OJ L 377, 31.12.1994).
4. Austrian law requires notification of cartels, which are defined to include agreements: which restrict competition in production, turnover, demand or price; which pertain to market behavior which consist of recommendations on price, price levels, methods of calculation, rebates, discounts which restrict competition; which relate to the use of particular standards; or which are designed to rationalize investment, production or research programs and distribution methods. Certain sectors are exempt, and the Minister of Justice can exempt certain categories of cartels from the general application of the law. (Sec. 17)
5. In Austria, concentrations are required to be notified when they meet the following threshold: together, their turnover was at least 3.5 billion Austrian schillings (ECU 259.4 million) in the year before the merger, and at least two of the undertakings has a turnover of 5 million schillings (ECU 370.600). These thresholds may be adjusted by the Minister and Paritätischer Ausschuss with respect to certain markets. (Sec. 42a)
6. Regarding cartel agreements, Austrian law requires that the notification include exact and exhaustive details which enable a judgment of the economic effects of the cartel, in particular: size and overall production in the relevant sector and size of that portion of the production by cartel members; name of important undertakings in the relevant market not participating in the cartel (for all but price or distribution cartels); and information on relations with existing cartels (Art. 60)

Regarding concentrations, the law requires that notification include exact and exhaustive details which enable a judgment of the economic effects of a concentration in which a dominant position may arise or be strengthened, including details about: the structure of the new undertaking created; each participating enterprise, including ownership and group relationships, and turnover relating to goods and services during the previous financial year; market share of each participating enterprise; market structure in general, and in relation to the media, information relating to the possible effect on choice. (Art. 68a)
7. The Austrian competition authority considers complaints made by government authorities, interested parties, and other parties specified in the competition law. (Arts. 8a, 25, 37)
8. Upon order of the Cartel Court (when considering a specific case) or the Ministry of Justice, the Paritätische Ausschuss, which consists of industrial social partners, delivers an expert opinion concerning the competitive situation in specified economic sectors. (Sec. 112)
9. In Belgium, notification of agreements, decisions, and concerted practices which constitute restriction of competition, as set forth in Art. 2, para. 1, is required when an exemption or negative clearance is sought. (Art. 7, para. 1)
10. In Belgium, concentrations in which the total turnover of the concerned enterprises exceeds B 1 million (ECU 25.370), and where they together control more than 20% of the relevant market, must be notified. (Art. 11) Until the Conseil renders a decision on the notified concentration, the enterprises concerned may not take measures which make the concentration irreversible,

permanently change the structure of the market. Within one month of notification, the Conseil may decide which measures satisfy these qualifications.

11. Belgian authorities consider complaints by both consumers and competitors.
12. Belgian authorities consider information from both EU and local governments.
13. Danish competition law is based on the abuse control principle. Accordingly, the purpose of the notification requirement is to ensure transparency so that it may be determined whether abuses have occurred. No exemptions exist under the law. Notification is required of "agreements and decisions by which a dominant influence is exerted or may be exerted on a certain market." Notification must be made within 14 days of the conclusion of the agreement or decision. Receipt of the notification does not constitute acceptance. (Sec. 5(1))
14. Denmark does not have a merger control statute.
15. The Danish Competition Council does not require use of any particular form for notifications. Written agreements must be submitted. Decisions and concerted practices must be evidenced by dated transcript from ledgers or similar documentation. (Notice from the Competition Council, 1.2.90)
16. The Danish Competition Council very rarely uses means other than notification to discover violations. However, it sometimes learns of cases on the basis of complaints or referrals from other authorities or the EU. It keeps a record of such cases, but does not always investigate them.
17. In Finland, undertakings must notify prohibited restrictive agreements, which include certain specified horizontal and vertical agreements, for which they seek an exemption. (Sec. 19)
18. The Finnish Office of Free Competition may order notification by an undertaking holding a dominant position, or an undertaking in a regulated industry, of any contract concerning the purchase of a majority holding, or other acquisition of a firm. (Sec. 11, para. 2)
19. In Finland, if a party wishes to notify a cartel, it may request a list of questions from the Authority. The questions which would be provided by the Authority concern the parties, the type of restriction, market shares, competitors, efficiency enhancing effects, etc. Alternatively, the party may file a notification without first obtaining the list of questions. In either case, the Authority may thereafter seek further information. (Sec. 10, 20)
20. Finnish authorities consider Information from EU, county and local governments.
21. in France, neither a voluntary nor an obligatory system of notification exists with respect to restrictive agreements. Rather, violative restrictive agreements are detected by investigators of the Conseil de la Concurrence based on their sectoral investigations and review of competitive indicators, and consumer and competitor complaints. (1986 Ordonnance, Art. 45)
22. In France, notification of mergers is optional. Concentrations not more than 3 months old may be notified to the Minister of Economy. A notification may include proposed undertakings. (1986 Ordonnance, Art. 40)
23. France does not have a merger notification form. However, the law specifies five categories of documents which should be included with the notification (a copy of the agreement, a list of the parties and their affiliates, their annual reports and market shares for the last three years, a list of the principle concentration transactions consummated by the parties over the last three years, and information regarding subsidiaries of the parties). (Décret du 29 décembre 1986, Art. 28)

24. In Germany, only those specified categories of agreements which can be exempted from the general prohibition must be notified. (GWB 2-6)
25. In Germany, concentrations satisfying certain threshold requirements must be notified under the GWB. Below these thresholds, there is no notification requirement and no control exercised. (GWB Sec. 23) Within one month of receipt of the completed notification, if the Bundeskartellamt notifies the parties that it intends to investigate further, then it must render a decision within four months of receipt of the notification, during which the merger may not be consummated. If, however, it does not so notify the parties within one month, then the merger may be consummated without further delay. (GWB Sec. 24a)
26. In Germany, the information which must be provided regarding those restrictive agreements which must be notified is set forth in the law. The entire agreement, signed by the parties and containing their addresses and the addresses of their representatives, must be provided to authorities. (GWB. Sec. 9)

Regarding concentrations, the information which must be provided includes the form of the concentration, the addresses of the parties, the nature of their business, their market shares and how they are calculated, the number of employees, turnover, and if the transaction involves the purchase of shares, the number of shares being purchased and the total amount of shares held by the purchaser. (GWB, Sec. 23(5))

27. German authorities consider all complaints, and in particular those made by present or former employees, consumers and customers to discover violations.
28. The Bundeskartellamt considers information received from the EU or from the Landeskartellamt, and information from press reports.
29. Under Greek law, parties must notify agreements, decisions and concerted practices within 30 days from the date of their conclusion when they seek an exemption or negative clearance. (Law 703 of 1977, Art. 21; Act 2296/95, Art. 5, para. 2, Art. 10, Art. 11) The provision for negative clearance was reinstated by Act 2296/95, Art. 4, para. 8. Notified agreements are deemed provisionally valid during the period between notification and a decision by the Competition Committee. (Ibid., Art. 23)
30. In Greece, all concentrations must be notified within one month from their realization except when less than 10% of the market share in the relevant market will be affected by the concentration, or the aggregate turnover of all firms involved does not exceed ECU 10 million. (Law 703/77, Art. 4a; Act 2296/95, Art. 2, para. 2) Every concentration where the market share in the relevant market is at least 25%, or the aggregate turnover of all firms involved exceeds ECU 50 million is subject to pre-merger control procedures. (Law 703/77, Art. 4b; Act 2296/95, Art. 2, para. 3) Such concentrations must be notified within ten working days of the conclusion of the agreement or the announcement of the public bid, or the acquisition of a controlling interest. Within two months of notification, the Competition Commission may issue a decision prohibiting the concentration from being effected, or allowing it under specified conditions. If a decision is not rendered within this time limit, the merger is deemed approved. (Id., Art. 4c) The merger cannot be put into effect before the Minister's decision or expiration of the time limits, and if it has been, it may be divested or other measures may be taken. (Id., Art. 4d)
31. Under Greek law, there is a notification form for restrictive agreements but not for concentrations. However, a concentration may be notified using the restrictive agreements notification form until a notification form for mergers is introduced. (Law 703/77, Art. 4a; Act 2296/95, Art. 2, para 2) A notification must include the following information: the business name of all participating undertakings and the documents incorporating the relevant agreement or decision. (Law 703/77, Art. 22; Act 2296/95, Art. 5, para. 3)

32. Greek public servants, servants of public law entities, and employees of public undertakings are obliged to notify the Competition Committee of any information they obtain by any means concerning infringements of the law pertaining to prohibited restrictive practices. Failure to do so is punishable by imprisonment of up to six months or a fine of DRG 100.000-500.000. (Law 703/77, Art. 4a; Act 2296/95, Art. 2, para. 2)

Greek competition officials utilize information from EU and local government officials, as well as from the daily press, to learn about possible violations.

33. The information provided herein regarding Ireland is based on the 1991 act. However, Ireland is currently considering modifications to this statute. Thus, information as to what the rules would be under the revised statute also is provided.
34. Under Irish law, agreements, decisions, or concerted practices must be notified to the Competition Authority if a party seeks a "certificate" (corresponding to a negative clearance under Art. 85 of the EU Treaty) or a "license" (corresponding to an exemption under Art. 85(3) of the EU Treaty). (1991 Act, Sec. 7(1)) Otherwise, notification is voluntary. Notification does not lead to immunity from fines since there are no fines under the 1991 Act, but notification does clarify the status of the agreement. If an action is subsequently brought by a private plaintiff, a court may annul a certificate, but no damages may be awarded for the period covered by a certificate. (1991 Act, Sec. 6(6))
35. In Ireland, each enterprise involved in a proposed merger meeting specified thresholds must notify the Minister for Industry and Commerce in writing before implementation. (1978 Act, Sec. 5) The Minister has three months from the date of notification in which to decide on the legality of the proposed merger. (Id., Sec. 6) Until the three month period has elapsed or the Minister states that no prohibition order will be imposed (whichever is earlier), title to any shares/assets concerned in the merger shall not pass. (Id., Sec. 3)
36. Under Irish law, form C/A must be used to notify restrictive agreements. For mergers, no form exists. The 1978 Act merely states that notification must be in writing and must "provide full details."
37. The Irish Competition Authority has no incentive to discover violations given that it has no power to fine companies for violations. The emphasis in the 1991 Act is on private enforcement.
38. Under Italian law, notification of restrictive agreements is optional. (Law n. 287, Art. 13, 10.10.90)
39. Under Italian law, concentrations must be notified when the turnover exceeds IL 586 billion (ECU 298,1 million) for the combined undertakings, or IL 58 billion (ECU 29,5 million) for the undertaking to be acquired. (Art. 16) After review of the information in a completed notification or otherwise learning of a concentration, if the Authority believes that the concentration may be prohibited, it must open an investigation within 30 days. (Art. 16) During this period, the concentration is not prohibited from being consummated, but if the authority has doubts, it may ask the parties to suspend the execution of the transaction until the investigation is completed. (Art. 17)
40. Under Italian law, interested parties, including consumer groups, may inform the Authority of possible violations. (Law n. 287, Art. 12)
41. Under Italian law, public bodies may inform the Authority of possible violations. (Law n. 287, Art. 12) The Authority also can proceed ex officio or at the request of the Minister of Industry with investigations of a general nature "in economic sectors where the development of commerce, the fluctuations of prices or other circumstances imply that competition is being prevented,

- restricted or distorted." (Art. 12) In addition, if a case has only national importance, the EU may inform the Authority or suspend an investigation while the Authority investigates.
42. Luxembourg does not have a merger control statute.
 43. In Luxembourg, consumer and competitor complaints are considered by the *Ministre de L'Economie*. Complaints received and investigations performed by the *Service de la Concurrence, des Prix et de la Protection des Consommateurs* also are used by the Minister.
 44. Dutch competition law is based, in principle, on abuse control. A prohibition may be imposed against an agreement which the Minister believes to be contrary to the "general interest." (WEM, Arts. 19, 24) Thus, notifications are required so that this determination can be made. Negative clearances do not exist under the law, but exemptions are available. In practice, following a notification, the Ministry will inform the parties when an agreement is considered to be within the scope of the generic prohibitions and whether an exemption is possible. Until a formal exemption is granted, an agreement falling under the generic prohibitions is void and forbidden.
 45. The Netherlands does not have a merger control statute.
 46. In the Netherlands, separate forms exist for notifications and for exemption applications. (WEM, Sec. 9g, 12)
 47. Netherlands authorities consider consumer and competitor complaints.
 48. Netherlands authorities consider Information from the EU and local governments, as well as other reliable sources.
 49. Under Portuguese law, a restrictive agreement may be notified in order to obtain an exemption or negative clearance, but notification is not required. (DL 371/93, Arts. 5.2) In practice, exemptions may be granted even if the agreement has not been notified.
 50. Under Portuguese law, if turnover of all the undertakings involved exceeds 30 million contos, net of taxes, or if market shares of the merging companies in the relevant national market will exceed 30% after the concentration, then notification of the concentration is required before it is consummated. (DL 371/93, Art. 7) Upon receipt of the notification, the DGCP must make a recommendation to the Minister within 40 days of the notification, who must either authorize it or pass it on to the *Conselho Da Concorrência* for further investigation within 50 days from the date of notification, who must complete the investigation and make a recommendation to the minister within 30 days, who must authorize, prohibit or impose conditions on the merger within 15 days. If, during this period, the merger was consummated, the Minister may order divestiture or other measures. (Id., Arts. 31-34)
 51. Portuguese law requires the following information to be included in a notification regarding a restrictive agreement: identification of the undertakings or associations of undertakings notifying or taking part in the agreement; the position of each in the relevant market; specified essential elements of the content of the agreement, including provisions affecting prices, production level, division of markets, discrimination, restricting economic freedom; proof that the purpose of the agreement is not to restrict competition; and justifications for why an exemption should be granted. (Portaria No. 1097/93, 29 de Outubro, Art. 3)

Regarding concentrations, the following information must be provided: identification of the individuals and undertakings taking part in the concentration, legal form and nature of the concentration, nature of goods and services provided; companies having interdependence or subordinate relations with the parties; market shares after the concentration and criteria for their determination; turnover in Portugal of the parties and the companies with which the parties have

- and suppliers; and other information needed to determine effect on competition. (DL 371/93, Art. 30)
52. Under Portuguese law, the Direção-Geral de Concorrência e Precos can learn about a restrictive practice by any means. (DL 371/93, Art. 22) In practice, this includes consumer and competitor complaints, as well as from doing general market studies for various sectors of the economy.
 53. All public administration services are required to inform the Direção-Geral de Concorrência e Precos of any infringement of which they become aware. (Art. 22(2)).
 54. Spanish law requires notification of prohibited agreements, decisions and concerted practices for which the notifying party seeks a single exemption or that an agreement be construed to fall within a group exemption. (Law 16/89, 17 July 1989, Arts. 36, 38.1)
 55. In Spain, notification of concentrations is optional. (LDC Art. 15)
 56. In Sweden, notification is required if the party seeks an exemption or negative clearance. If the notified activity is subsequently determined to constitute a violation, no fines will be imposed for the period from the time the notification is completed until the competition authority renders a decision. (SFS 1993: 20, paras. 9, 20, 29)
 57. Under Swedish law, notification is required of concentrations where the total combined worldwide turnover of the undertakings involved in the concentration for the preceding year exceeded SKR 4 billion (ECU 434.4 million). (SFS 1993:20, para. 37) Within 30 days of receiving the completed notification, the authority must decide whether to investigate. During this period, the merger cannot be consummated. After making this decision, the authority has three months within which to file an action with the Stockholm City Court. The City Court must decide the case within six months. (Id., paras. 38, 39, 42)
 58. In Sweden, restrictive agreements must be notified on form K1. (KKVFS 1993:1) Concentrations must be notified on form K2. (KKVFS 1993:3).
 59. Swedish authorities rely upon information provided by EU authorities to discover violations.
 60. In the UK, restrictive agreements must be registered with the Director-General of Fair Trading. (Restrictive Trade Practices Act 1976, Secs. 1(1), 6, 7, 11, 12)
 61. Under the Fair Trading Act, voluntary notification of concentrations is provided. Upon filing of the notification, a reference by the Director General of Fair Trading must be made within 28 days. (Fair Trading Act of 1973, Sec. 75A)
 62. The same form must be used for notification of both restrictive agreements and concentrations.
 63. In the UK, consumer and competitor complaints are a common source of information.
 64. In the UK, local authorities are an important source of information for both cartels and concentrations. To this end, the OFT has published a booklet for them entitled "Cartels: Detection and Remedies," explaining the most common warning signs of the existence of a cartel. Moreover, investigations of concentrations by the Monopolies and Mergers Commission and Office of Fair Trading often reveal restrictive practices. Other sources include the press and industrial publications.
 65. Under Canadian law, the merger notification requirement does not apply to all mergers, but only share acquisitions, amalgamations, asset acquisitions, and combinations satisfying specified thresholds. (Competition Act, Part IX, Sec. 110) Each party to such a transaction is required to prenotify their plans in detail if: (1) the parties together with their affiliates have revenues or assets in excess of

C\$400 million (ECU 232.8 million), and (2) the transaction does not qualify as a joint venture, exempt from the notification requirements (Sec. 112) or does not fit within other specified exemptions (Secs. 111 and 113).

If the transaction does not qualify for exemption, the parties must notify the Director of Investigation and Research of the planned merger, supply certain information, and wait at least 7 but not more than 21 days before completing the proposed transaction. (Sec. 114)

66. Under Canadian law, parties are not required to report information in a specific format. The information can be supplied in short form or long form. The long form requires more information on affiliates and categories of products produced and purchased. The information which must be provided, includes: a description of the proposed transaction, a summary of principal businesses, including affiliates; the categories of products produced and acquired; financial statements; a list of affiliates with significant assets or sales in Canada; and the names of principal suppliers and customers and the volume of business with each. (Competition Act, Secs. 120 to 122)
67. Canadian authorities receive complaints almost daily from businesspersons. The law provides that any six Canadian citizens may address to the Director a formal application for an inquiry, and sets forth the procedures which must be followed. (Competition Act, Sec. 9)
68. The Canadian Minister of Consumer and Corporate Affairs may instruct the Director of Investigation and Research to inquire whether any provision of the Competition Act has been or is about to be violated.
69. Mexican law requires notification of a concentration in the following specific cases: transactions which involve a value greater than 12 million times the general minimum wage; transactions which result in the accumulation of 35% or more of the assets or shares of an economic agent, whose assets or sales are at least 12 million times the general minimum wage; or transactions in which 2 or more economic agents are involved whose assets or annual sales, added together, amount to 48 million times the general minimum wage, and the transaction in question will result in an additional accumulation of assets or equity of more than 4.8 million times the general minimum wage. (Ch. 3, Art. 20)
70. Mexican law requires that the following information be provided: the names of the economic agents involved; the last annual report; market shares and any additional information; and a copy of the agreement. (Ch. 3, Art. 21)
71. Under Mexican law, consumer and competitor complaints may be considered by the authority. (Ch. 2, Art. 15)
72. The information provided herein is based on the 1985 Swiss competition law, currently in effect. This law, which is based on the abuse control principle, is likely to be replaced soon. A new draft competition law is under consideration by the Swiss parliament. The draft law is almost a prohibition system, but the Swiss Constitution, which provides that competition law "may remedy socially harmful effects of cartels," would not permit enactment of a law entirely based on prohibition. (Constitution, Art. 31-bis3(d))

Information is provided as to what the rules would be under the draft law.

73. The new draft competition law would provide for notification of mergers.
74. Swiss law provides that any interested party may complain to the authority. (Sec. 8) The new draft competition law would provide that the authority may also learn of potential violations through its own initiative, and complaints of involved and third parties. (Draft Art. 26 Restr. Agr.)

75. The Hart-Scott-Rodino Act requires notification of proposed mergers or acquisitions that exceed specified size-of-party and size-of-transaction thresholds. It further requires that the transaction not be consummated for a specified waiting period (15 days for cash tender offers, 30 days for all other transactions). (15 USC 18a (1988 & Supp. 1993); 16 CFR 803.1 (1994))
76. Enforcement authorities in the US rely on complaints from citizens and industry.
77. In the US, authorities also rely on reports in major trade journals and newspapers, sectoral studies undertaken by the agencies' attorneys or economists, an inquiry from a concerned senator or representative of the US Congress, and monitoring private antitrust litigation.

**TABLE IB.
ACTIONS BY NOTIFIED AUTHORITY**

EU/Member State	Authority Receiving Notification (IC)	Authority's Responsibilities			Authority's Actual Practice		
		Investigate (ID)	Decide on Legality (ID)	Other (ID)	Investigate (IE)	Decide on Legality (IE)	Other (IE)
European Union	Commission ¹	yes ²	yes ²	yes ³	yes	yes	yes
Austria	Cartel Court	yes ⁵	yes	no	yes ⁶	yes	no
Belgium	Service de la Concurrence	yes ⁷	yes ⁸	no	yes	yes ⁸	no
Denmark	Competition Council	yes ⁹	yes	no	no ¹⁰	yes ¹⁰	yes
Finland	Office of Free Competition	no ¹¹	yes	no	yes ¹²	yes	no
France	Le Ministre de l'Economie	yes ¹³	yes ¹³	no	yes ¹⁴	yes	no
Germany	Bundeskartellamt, Landeskartellamt ¹⁵	yes ¹⁶	yes	yes ¹⁷	yes	yes	no
Greece	Director for Market Research and Competition, Ministry of Commerce	yes ¹⁸	yes ¹⁸	yes ¹⁸	yes ¹⁹	yes	no
Ireland	The Competition Authority, the Minister of Industry and Commerce ²⁰	yes ²¹	yes ²¹	no ²¹	yes ²²	yes	no
Italy	Autorità Garante della Concorrenza e del Mercato	yes ²³	yes	yes ²⁴	yes ²⁵	yes	no
Luxembourg	Le Ministre de l'Economie ²⁶	n/a	n/a	n/a	n/a ²⁷	n/a	n/a
Netherlands	Ministry of Economic Affairs	no ²⁸	no ²⁸	no	yes	no	no
Portugal	Conselho da Concorrência, Direcção-Geral de Concorrência e Precos ²⁹	yes ³⁰	yes ³⁰	no	yes	yes	no
Spain	Servicio de Defensa de la Competencia (SDC) ³¹	yes ³²	yes ³²	no	yes	yes	no
Sweden	Swedish Competition Authority	yes ³³	yes ³⁴	no	yes ³⁵	yes	no
United Kingdom	Office of Fair Trading	yes ³⁶	yes ³⁶	yes ³⁶	yes ³⁷	yes ³⁷	yes ³⁷
Third Country							
Canada	Director of Investigation and Research ³⁸	yes ³⁹	yes ³⁹	no	yes ⁴⁰	yes	no
Mexico	Federal Competition Commission	yes ⁴¹	yes ⁴²	no	yes	yes	no
Switzerland	Wettbewerbskommission	n/a ⁴³	n/a ⁴³	n/a	n/a	n/a	n/a
USA	Department of Justice, Federal Trade Commission ⁴⁴	yes ⁴⁵	yes ⁴⁵	yes ⁴⁵	yes	yes	yes

FOOTNOTES TO TABLE IB

1. Reg. 17, Art. 10 requires the Commission to transmit copies of applications and notifications to the competent authorities of the Member States. The Merger Reg., Art. 19, requires the Commission to transmit copies of all notifications and the most important documents to the competent authorities of the Member States.
2. Art. 89, para. 1 of the EC Treaty states that "[o]n application by a Member State or on its own initiative, and in cooperation with the competent authorities in the Member States, who shall give it their assistance, the Commission shall investigate cases of suspected infringements of [the principles laid down in Articles 85 and 86]." Art. 14 of Reg. 17 provides that the Commission "may undertake all necessary investigations into undertakings and associations of undertakings" in performing its duties under Treaty Arts. 87 and 89.

The Merger Regulation, Art. 6, requires the Commission to examine the notification as soon as it is received. If the Commission concludes, after an initial investigation, that the notified concentration "raises serious doubts [as to whether it is] compatible with the common market," then it must initiate proceedings, involving a more in-depth investigation. Article 10 sets strict time limits within which the Commission must complete these tasks.

3. Art. 89 of the EC Treaty requires the Commission to make a decision following an investigation of a suspected infringement of Articles 85 or 86. If the infringement has not been brought to an end, the Commission is required to "record such infringement of the principles in a reasoned decision," which it may publish. Reg. 17, Art. 10 requires the Commission to consult an Advisory Committee of the Member States prior to taking any decision on application or notification.

Regarding mergers, the Merger Regulation, Art. 8 requires that following a phase two investigation, the Commission must decide whether the proposed concentration is "compatible with the common market." Art. 19 requires that the Commission submit its draft decisions to an Advisory Committee of the Member States, which must deliver an opinion on the draft. The Commission must take "utmost account" of the Advisory Committee's opinion.

4. Art. 89, para. 1 of the EC Treaty states that if the Commission finds that an infringement of Art. 85 or 86 has been committed, "it *shall* propose appropriate measures to bring it to an end." (emphasis added) Para. 2 states that if the infringement is not brought to an end, "[t]he Commission may publish its decision and authorize Member States to take the measures, the conditions and details of which it shall determine, needed to remedy the situation."

Reg. 17 does not require the Commission to take a decision as to whether an exemption should be granted under Art. 85(3). However, Art. 9 provides that "the Commission shall have sole power to declare Art. 85(1) inapplicable pursuant to Art. 85(3) of the Treaty."

5. Upon receipt of a merger notification, the Austrian Cartel Court must announce it immediately in the official journal. Thereafter, within one month, various government authorities and associations, as well as affected businesses, may request the Cartel Court to investigate to determine whether the merger is allowed. Otherwise, the Cartel Court must confirm that it has received no such requests or that they have been withdrawn. (Sec. 42a, 42b) However, if requested to do so, the Cartel Court must decide whether the merger is permissible within five months of the date of notification. (Sec. 42b)
6. When there is no application for an investigation following a merger notification, the Cartel Court confirms the merger without investigation. (Sec. 42a, 42b)
7. In Belgium, investigations are made of notified restrictive business practices for which a request has been made for negative clearance or exemption (Art. 23(1)(a)), and of notified concentrations

(Art. 23(1)(b)). Investigations also may be commenced *ex officio*, on demand of the Ministry of Economics or of the Council for Competition, based upon a complaint of a natural or legal person with a general interest in the matter, or on demand of the Court of Appeal of Brussels when it has been presented with a question on a competition matter. (Art. 23(1)(f)). Investigation of a sector may be initiated at the request of the President of the Council for Competition (Art. 26), or when applying for interim measures. (Art. 35)

8. In Belgium, the Service de la Concurrence receives notifications, but the Competition Council which is responsible to decide on the legality of notified activities.
9. In Denmark, only if a notified transaction constitutes an obvious infringement would an investigation be commenced. An investigation can be initiated at any time, so that if market conditions change, a transaction not investigated at the time of notification may subsequently be investigated. Even in such cases, the normal result is for the authority and the parties to reach a settlement to modify the violative provisions. (Secs. 5, 6)
10. In practice, the Danish Competition Council confirms receipt of the notification in writing, then briefly reviews the notifications, and in the absence of obvious infringements, simply files them. If some doubts arise, the Council further evaluates the market to determine whether one or more of the parties to the transaction holds a dominant position. If, after inspection, the Competition Council concludes that a notified transaction constitutes a violation, it first attempts to "terminate the harmful effects through negotiation." (Sec. 11) If this fails, then it can take further actions such as imposing fines. However, in most cases a negotiated settlement is achieved.
11. The Finnish Office of Free Competition will grant an exemption if it finds that the restriction contributes to an increase in the efficiency of production or distribution or furthers technical or economic progress, and if it mainly benefits the customers or consumers. (Sec. 19) To make this determination, the Office of Free Competition may request further information. (Sec. 20).

In the absence of a notification, the Office of Free Competition or County government may require an undertaking or association of undertakings to submit all information and documents necessary to examine the contents, purpose and effect of a restriction on competition and conditions of competition, or whether that undertaking or association of undertakings is in a dominant position. (Sec. 10).

The Office of Free Competition or County government also is empowered to investigate in order to ensure compliance with the Act. (Sec. 20).

12. Finnish authorities inspect in cases in which it appears that the agreement may have an important economic effect.
13. In France, the Minister's silence on a merger notification for 2 months constitutes a clearance. This time period is extended to six months if the Minister has transferred the case to the Conseil de la Concurrence for investigation. (Ordonnance of 1986, Art. 40)
14. French authorities investigate if they believe that a proposed concentration may be injurious to competition.
15. Under German law, the Bundeskartellamt is competent to investigate concentrations, restrictive agreements concerning crisis cartels, export cartels, and import cartels, agreements where the impact of the restrictive behavior goes beyond one country, and some other agreements of minor importance. Otherwise, the competence to investigate lies with the Landeskartellamt. (GWB, Sec. 44)
16. German law does not explicitly create a duty to investigate restrictive agreements. Rather, the decision to investigate is left to the discretion of the responsible authority.

German authorities are required to investigate notified restrictive agreements and concentrations. (GWB, Sec. 2-8)

17. The Bundeskartellamt may demand an immediate halt or modification to a violative restrictive agreement, or declare the agreement void. (GWB Secs. 9, 12) Regarding concentrations, the Bundeskartellamt may prohibit or grant a clearance. (GWB Secs. 23, 24)
18. In Greece, the Secretariat of the Competition Committee is responsible to investigate notified restrictive agreements and concentrations, then to report to the Competition Committee, which will decide what action to take.
19. In practice, the Secretariat of the Competition Committee investigates after receiving a notification, as well as following receipt of information from other public authorities and in press reports, or following research which it undertakes on its own initiative or pursuant to Ministerial order.
20. The Irish Competition Authority receives notifications regarding restrictive practices (1991 Act, Sec. 7 (1)); the Minister for Industry and Commerce receives notifications regarding proposed mergers. (1978 Act, Sec. 5)
21. Under Irish law, the Competition Authority is under no duty to investigate restrictive practices. (1991 Act) The 1994 bill, currently under consideration, would impose a duty on the Director of Competition Enforcement (a member of the Competition Authority) to investigate any restrictive practices or abuses of a dominant position that he suspects to have occurred. In addition, the Director would be obliged to recommend to the Authority whether to bring an enforcement action in the courts with respect to a restrictive agreement. However, these duties would not arise specifically on receipt of a notification.

Regarding mergers, upon receipt of a notification, the Minister must either inform the enterprises in question as soon as possible that he has decided not to issue a prohibition order regarding the merger, or he must refer the notification to the Competition Authority for investigation. Upon receipt of such referral, the Authority must investigate and send a report to the Minister. (1978 Act, Secs. 7, 8)

22. In practice, Irish authorities investigate mergers which have been notified and referred by the Minister.
23. Under Italian law, in cases of suspected infringements of Art. 2 (Restrictive Practices) or Art. 3 (Abuses of Dominant position), the Authority is required to open an investigation. If the restrictive agreement has been notified, the Authority must open the investigation within 120 days of receiving the completed notification.

After review of the information in a completed notification or otherwise learning of a concentration, if the Authority believes that the concentration may be prohibited, it must open an investigation within 30 days. (Art. 16)

24. In cases where the Italian Authority does not open an investigation regarding a notified concentration, it must so inform the parties and the Ministry of Industry, Commerce and Crafts, and deliver its opinion on the matter, within 30 days of receiving the notification.
25. In practice, the number of investigations initiated in Italy for concentrations and restrictive agreements is remarkably low in comparison to the number of notifications filed.
26. The Ministre de L'Economie receives complaints only, as there are no notifications in Luxembourg.

28. Competition law in the Netherlands is based on the abuse control principle. Thus, there is no obligation to investigate or decide on the legality of the notified activities. However, if an agreement contains clauses of the type forbidden by certain "generic measures" set forth in the law or taken by an Order in Council under WEM, Art. 10, (relating to collective resale price maintenance, collective bidding for construction projects, rules for internal discipline for parties to a restrictive agreement, and horizontal price fixing), then a party may make modifications or apply for an exemption from the applicable generic prohibition. (WEM Art. 9(g), 12) The authority will decide on such applications within several months, sometimes after collecting additional information. All notifications that are received are filed in a register of restrictive agreements, which is not made public.
29. In Portugal, the Direcção-Geral de Concorrência e Precos receives notifications regarding concentrations (Art. 30.1); the Conselho da Concorrência receives notifications regarding restrictive practices. (Art. 5.2)
30. In Portugal, regarding restrictive practices, the Conselho da Concorrência can request further information, then send the case to the Direcção-Geral de Concorrência e Precos to "instruct the case," which may include investigation and hearing. (Art. 12) The Conselho da Concorrência is responsible to decide on whether to grant an exemption. (Art. 5.2)

Regarding concentrations, the Direcção-Geral de Concorrência e Precos is responsible to "instruct the case," which may include investigation and hearing, followed by making a recommendation to the Ministry, which ultimately decides on legality. (Art. 31)

31. The Spanish Servicio de Defensa de la Competencia is within the Ministerio de Economía y Hacienda.
32. Regarding restrictive practices in Spain, upon receipt of a notification, the SDC investigates and sends the case with a proposed disposition to the TDC. The TDC conducts a further investigation and issues a final decision within 20 days of receipt of the file. (LDC, Arts. 31-44)

Regarding concentrations, upon receipt of a notification, the SDC must investigate and prepare an advisory note for the Minister. Within one month of the date the notification was filed, the Minister will either take no action, in which case the concentration is deemed to be permitted, or send the case to the TDC for further investigation. In the latter scenario, the TDC will prepare a non-binding decision, which is sent to the Minister, who forwards it to the government, which issues a final decision within three months of receipt of the file. (LDC Arts. 15 --34; Rg., Arts. 3-15)

33. The Swedish Competition Authority shall review the information contained in a notification in order to determine whether a negative clearance or exemption should be granted. (SFS 1993:20, paras. 8, 9, 20)

The Swedish Competition Authority may initiate a special investigation concerning a notified concentration within 30 days of receiving the completed notification. During this period, the concentration cannot be consummated. (SFS 1993: 20, para. 38)

34. Regarding restrictive agreements, the Swedish Competition Authority decides whether to grant a negative clearance or exemption. The decision of the Authority to grant a negative clearance does not prevent a private action. The decision of the Authority should specify the date from and until which the exemption applies. (SFS 1993:20, para. 10)

Regarding concentrations, the Swedish Competition Authority must decide within 30 days of receiving a completed notification whether it objects. If it does, it can bring an action before the Stockholm City Court. A decision not to oppose may be changed if the Authority subsequently learns that the information provided in the notification was incorrect. (Id., para. 40) The

Stockholm City Court must decide the case within six months. (Id., para. 42) The Authority may ask the City Court to enjoin the consummation of the concentration for this entire period. (Id., para. 41)

35. The new Swedish competition law, which is substantially the same as EU competition law, has only been effective since 01.07.93. Therefore, Swedish authorities thus far have little practical experience. However, the practice has been to investigate when there is a clear need to do so.
36. In the UK, the Director General of Fair Trading is required to bring proceedings before the Restrictive Practices Court with respect to each agreement registered, except: where the European Commission has granted an exemption pursuant to Art. 85(3)(RTPA Sec. 21(1)(a); where the agreement or restriction has been terminated (RTPA Sec. 21(1)(b); or where the DGFT opines that the restrictions are insignificant, and the Secretary of State for Trade and Industry agrees. (RTPA Sec. 21(2))
37. In the UK, proceedings before the Restrictive Practices Court are opened only rarely. The normal procedure is that when the DGFT is not satisfied that the agreement falls under one of the exceptions discussed in note 36 supra, he sends the parties a letter informing them that proceedings will be brought before the RPC, which normally results in the parties amending the agreement to bring it into conformance with the law.
38. A "notifiable transactions unit" has been established within the Mergers Branch of Canada's Bureau of Competition. Before filing, parties are encouraged to contact the unit with questions concerning interpretation of the provisions, whether a short form or long form, or the nature of the information which should be provided.
39. The Canadian Director of Investigation and Research must commence an investigation whenever he has reason to believe that an offence has been or is about to be committed, or that grounds exist for the Tribunal to make an order respecting reviewable matters, such as a proposed merger. (Sec. 10)

The officer assigned to the case must decide, based on the information filed, whether the notified transaction raises an issue. If not, the merger can be completed without further investigation after the waiting period. If so, the parties are contacted, usually within the 21 day waiting period, and advised of the director's concerns. The merger branch undertakes a more in-depth investigation. Analysis of complex mergers may take longer than 21 days. In such cases, parties normally will delay completion of the transaction until the Director has completed the investigation.

40. Canadian Bureau officials often visit and inspect the facilities of the merging parties and will seek clarification of the written materials it has received by interviewing the appropriate personnel and experts. Moreover, to verify the information provided by the parties and to form an independent view of whether the merger is likely to result in a substantial prevention or lessening of competition, the Bureau staff normally contacts third parties (including federal and provincial government departments and agencies which have prepared industry studies, customers, competitors and suppliers) for their views. The Bureau may also contact foreign government sources or foreign third parties.

Parties generally cooperate in providing information requested and allowing sufficient time for authorities to conduct a complete assessment of the merger's impact.

41. In Mexico, the Competition Commission may request additional information or documents regarding a notified merger within 20 days of receipt of the notification. (Ch. 3, Art. 21)
42. The Mexican Competition Commission must decide whether to prohibit a merger within 45 day of receipt of the completed notification and any additional documents requested. A reasoned

decision must be issued within this time limit. Silence will be deemed to be approval. (Ch. 3, Art. 21)

43. Under the draft law, the Wettbewerbskommission would be required to determine the effects on competition of a notified concentration. If it does not create or augment a dominant position, or if it improves competition in other markets in compensation for creating or augmenting a dominant position, the concentration will be cleared. (Draft Art. 10)

The Secretary (the permanent body of the competition authority) would be obliged to open an investigation procedure if the civil court, competition commission, or Federal Department of Economic Affairs asks for it. In other cases, the decision to open an investigation would be discretionary. (Draft Art. 27)

44. Notifications must be filed with both the United States Department of Justice and the Federal Trade Commission. (15 USC 18A)
45. Under the Hart-Scott-Rodino Act, the Department of Justice (DoJ) and Federal Trade Commission (FTC) may, before the end of the relevant waiting period, make a "second request" - i.e., request additional information concerning a transaction. The waiting period would thereby be extended to a specified number of days after receipt of material required by the second request. (15 USC 18a(e)(1988)) Thereafter, the DoJ or FTC may approve the merger or file an action in federal district court for an order enjoining the consummation of the merger. (15 USC 45, 53(b)) If the federal court declines to enjoin the merger, it may still thereafter be subject to an FTC Administrative proceeding, following which the FTC may issue an order for divestiture, subject to judicial review. (15 USC 21b, 45b) Moreover, the government and the parties may enter consent decrees, which are final settlements, subject to court determination that such decree will be in the "public interest" before it is entered. (PL 93-528)

TABLE IIA.
INVESTIGATING AUTHORITY'S POWERS OF INVESTIGATION

EU/Member State	Authority Empowered to Investigate		Authority's Powers of Investigation				
	Independent (IIA)	Within Government Ministry (IIA)	Issue Written Interrogatories/ Questionnaires (IIC1)	Issue Document Requests (IIC2)	Make On-Site Inspections (IIC3)	Question Individuals Orally (IIC4)	Criminal Investigative Powers (IIG)
European Union		Commission	yes ¹	yes ¹	yes ²	yes ²	no
Austria	Cartel Court		yes ³	yes ³	yes	yes	no ⁴
Belgium		Service de la Concurrence ⁵	yes	yes	yes ⁶	yes	no ⁶
Denmark	Competition Council ⁷		yes	yes ⁸	yes ⁹	yes ¹⁰	no ⁹
Finland	Office of Free Competition, County government ¹¹		yes ¹²	yes ¹²	yes ^{12, 13}	yes	no ¹³
France	Conseil de la Concurrence ¹⁴	Ministre de l'economie ¹⁴	no	yes ¹⁵	yes ¹⁵	yes ¹⁵	no ¹⁵
Germany	Bundeskartellamt ¹⁶	Landerkartellamt ¹⁶	yes ¹⁷	yes ¹⁷	yes ^{17, 18}	yes ¹⁷	yes ¹⁸
Greece	Competition Committee ¹⁹		yes ²⁰	yes ²⁰	yes ²⁰	yes ²⁰	no ²⁰
Ireland	Competition Authority ²¹		yes ²²	yes ²²	yes ²²	yes	no
Italy	Autorità Garante della Concorrenza e del Mercato		yes	yes	yes	yes	no
Luxembourg	La Commission des Pratiques Commerciales Restrictives ²³	Service de la Concurrence, des Prix et de la Protection des Consommateurs ²³	yes	yes	yes ²⁴	yes	no ²⁴
Netherlands	Economic Competition Committee ²⁵	Ministry of Economic Affairs ²⁵	yes ²⁵	yes ²⁵	yes ²⁵	yes ²⁵	no ²⁵
Portugal	Conselho da Concorrência ²⁶	Direcção-Geral de Concorrência e Precos ²⁸	yes	yes	yes ²⁷	yes	no ²⁷
Spain	Tribunal de Defensa de la Competencia ²⁸	Servicio de Defensa de la Competencia ²⁸	yes	yes	yes ²⁹	yes ³⁰	no ²⁹
Sweden	Swedish Competition Authority		yes	yes	yes ³¹	yes ³¹	no ³¹
United Kingdom	Office of Fair Trading, Monopolies and Mergers Commission, Restrictive Practices Court ³²		yes ³³	yes	no	yes ³⁴	no ³³
Third Countries							
Canada		Director of Investigation and Research ³⁵	yes ³⁶	yes ³⁶	yes ³⁶	yes ³⁶	yes ^{36, 37}
Mexico	Federal Competition Commission		yes	yes	no	yes	no
Switzerland	Wettbewerbskommission ³⁸		yes	yes	no ³⁹	yes	no
USA	Federal Trade Commission	Department of Justice	yes ⁴⁰	yes ⁴⁰	yes ⁴⁰	yes ⁴⁰	yes ⁴¹

FOOTNOTES TO TABLE IIA

1. The Commission may obtain all necessary information from the Member States, undertakings, and associations of undertakings. It may send a "request for information" to undertakings or associations of undertakings. This may include questions requiring written answers and a request for documents (Reg. 17, Art. 11 and Merger Reg., Art. 11)
2. In carrying out an investigation, Commission officials may examine and take copies from books and other business records, ask for oral explanations on the spot, and enter premises, land and means of transport of undertakings. (Reg. 17, Art. 14 and Merger Reg., Art. 13)
3. The Austrian Cartel Court can demand updated copies of agreements where the current ones are not understandable (Art. 64); an improved notification (Art. 65(1)); and updates on the economic situation where it is likely that this will change. (Art. 66)
4. Criminal investigative powers arise in Austria if the file is passed on to the public prosecutor to initiate a case regarding those acts which also constitute violations of the criminal law. (Criminal Law Secs. 129-141)
5. Under Belgian law, the power to investigate rests with the Service de la Concurrence, which is within the Ministry of Economics. However, decision-making power rests with the Conseil de la Concurrence, an administrative court which is within the Ministry of Economics. (Art. 16)
6. Under Belgian law, on-site inspections may be made of the dwelling of directors, administrators, and financial officials of an undertaking under investigation, with a court-issued warrant. The police may be asked to assist in execution of an on-site inspection. (Art. 23(2), (3)) Moreover, on-site inspection of business premises may be made with a mandate issued by the President of the Council for Competition.
7. The Danish Competition Council is an independent authority. Its chairman is appointed by the King, and the other members are appointed for 4-year terms by the Ministry of Trade.
8. The Danish Competition Council may demand any information, including accounts, accounting records, transcripts from ledgers, other business records and electronic data which is considered necessary for its activities. (KKL Sec. 6)
9. The Danish Competition Council may obtain a court order permitting it to gain access to the premises and vehicles of an undertaking and "on the spot obtain and make copy of any information which is of importance for the performance of supervision according to [the Act], including accounts, accounting records, ledgers, other business records and electronic data." Police assistance may be required by the Council. (Sec. 21) However, this has never been done.
10. Danish Competition Council staff may call and ask representatives of the undertaking at issue for the information needed. Thereafter, the Council staff person makes a summary of the telephone conversation.
11. The Finish competition authorities are independent, but administratively linked to the Ministry of Trade and Industry. Accordingly, their budget is within the control of the Ministry, but it exercises no authority over the their operation.
12. In Finland, the subject undertaking or association of undertakings may be required to submit all information and documents necessary to examine the contents, purpose, and effect of a restriction on competition and conditions of competition, to investigate whether the undertaking or association of undertakings is in a dominant position. Authorities may require that such information be submitted in writing. (Sec. 10)

The Office of Free Competition or the County Government may conduct an inspection to supervise compliance with the Act and orders issued under it. It must be given access to all business and storage premises, land areas and means of transport in its possession, provided all business correspondence, accounts, data processing records and other documents which may be of importance to supervision of such compliance. It may take copies. (Sec. 20)

13. On July 1, 1994, pursuant to the EEA Agreement's requirement that the Finnish Office of Free Competition must give the competition authorities of the EEA assistance in inspections, Section 20 was modified to allow police assistance in investigations. Such assistance is possible only pursuant to the requirements of Section 20 or the EU competition rules, both governing on-site inspections. When this provision took force, the Office of Free Competition and the Ministry of Internal Affairs entered an agreement of cooperation, under which competition authorities may phone the police, who must provide an ordinary patrol car at the site of the undertaking in question. This has never been done.
14. The French *Ministre de l'Economie* can make necessary investigations, and the *Conseil de la Concurrence* may investigate in areas where it has been delegated responsibility to do so. (1986 *Ordonnance*, Art. 45)
15. Pursuant to a request of the *Ministre de l'economie* or the *Conseil de la Concurrence*, French investigators may have access to all places, land, or means of transport, to search and seize all documents or copies which are useful to the investigation, to read all books, records and other documents and take copies thereof, to question all concerned individuals, by call or on site, and to issue written interrogatories, for all information and justification. On-site inspection of premises can be made without a warrant. (1986 *Ordonnance*, Art. 47). However, a search for items not in plain view can only be made pursuant to judicial authorization given by order of the president of the "*Tribunal de grande instance*." (1986 *Ordonnance*, Art. 48)
16. The *Bundeskartellamt* is independent of the government and is a higher federal authority. It reports to the Federal Minister of Economics. (GWB Sec. 48) The extent of the Minister's authority to impose specific instructions on the *Bundeskartellamt* is controversial, but he/she may impose general instructions regarding decisions pursuant to the *GWB*. Such instructions do not, however, bind the courts.

The *Landerkartellamt* report to the State Ministries of Economics and are not independent.

17. The *Bundeskartellamt* has authority to collect any evidence it deems necessary for the performance of its duties. However, an investigation can only be made to determine whether violation of a specific provision of the *GWB* has occurred; fishing expeditions are not allowed. Thus, the *Bundeskartellamt* must have reasonable grounds to believe that a violation has occurred.
18. On-site inspections under the *GWB* can only be made on business premises, and only pursuant to an order of the County Court having jurisdiction in the territory where the search is made. However, no order is necessary where there is danger in delay. (*GWB*, Sec. 46(4))

Under the *OWiG*, the means to coerce the production of information in criminal law are permissible. Accordingly, searches and seizures of premises, including dwellings, are permissible. (*OWiG*, Art. 46, para. 3) Police assistance may be requested by enforcement authorities.

19. Recent amendments to the competition law have established the Greek Competition Committee as an independent authority, and have entrusted it with the responsibilities which had been those of the Directorate for Market Research and Competition. (Law 703/77, Arts. 8, 8c; Act 2296/95, paras. 1, 4)
20. The President of the Competition Committee or the authorized officials of its Secretariat may send a written request for information. Officials of the authority who have been authorized by a

mandate issued by the President of the Competition Committee or the Director of its Secretariat can investigate the offices and other premises of undertakings and associations of undertakings; examine their books, records or other documents, and take copies. Domiciles may be investigated, but only with a warrant, and Constitutional guarantees must be observed. Any person may be questioned, and sworn or unsworn statements may be taken. Subject to the provisions of specific law, Public Authorities and Corporate Bodies of Public Law are obliged to provide information and assistance to the Competition Committee and its authorized officials during the execution of their duties. (Law 703/77, Arts. 25, 26; Act 2296/95, Art. 6, para. 2)

21. The Competition Authority, which is an independent body whose members are appointed by the Minister, may be required by the Minister to investigate a possible abuse of a dominant position (1991 Act, Sec. 14), or a notification of a proposed merger. (1978 Act, Sec. 7)

Under the 1994 bill, the Director of Competition Enforcement, who will be a member of the Competition Authority, would be required to investigate restrictive practices or abuses of a dominant position which he/she suspects to violate the law. (1994 bill, sec. 7)

22. Upon production of a court warrant, the Authority is empowered to require any person involved in business, and their employees, to provide any necessary information. (Sec. 21(1)(d), (e)) On production of a warrant issued by a Justice of the District Court, an authorized officer may require a person involved in the business of supplying/distributing goods or providing services to produce any books, documents or records relating to such activities which are in that person's control, and copy or take extracts from them. (1991 Act, Sec. 21(1)(b)); or to enter and inspect business premises. (1991 Act, Sec. 21 (1)(a))
23. The Luxembourg Service de la Concurrence des Prix et de la Protection des Consommateurs, which is within the Ministry of Economy, has the power to conduct investigations. (Loi du 17.6.70, Art. 3; Loi du 2.10.93, Art. 2) Moreover, the Minister has the discretionary power to request the Commission des Pratiques Restrictives to open an investigation. However, the Minister must make such request if he has been told to do so by the procureur d'Etat. The Commission has the official power to conduct investigations when so requested. The Commission is an ad hoc independent administrative authority, but includes among its members fonctionnaire representatives of the Minister of the Economy, the Minister of Justice, and "Ministère des classes moyennes." Its independence is said to be based on the fact that it is not a permanent body, convened only on an ad hoc basis. In practice, the Service de la Concurrence will conduct the investigations on behalf of the Commission.
24. Luxembourg investigators must have a written order of the Minister to make on-site inspections, which specifies its objective. Investigators may check all documents and other objects on-site. If an undertaking or association of undertakings opposes an investigation or inspection, the investigators may obtain police assistance. (Loi du 29.4.89, Art. 1; Loi du 2.9.93, Art. 3)
25. The Minister of Economic Affairs and, to a more limited extent, the Economic Competition Commission, have powers to investigate, including powers to issue written interrogatories, to question individuals orally and to ask any person to provide information necessary to make an initial assessment as to whether a restrictive agreement or dominant position is violative. (WEM, Art. 16) However, the Minister also possesses more extensive powers, which may be used only if demonstrable circumstances exist which raise doubts as to a violation exists. The Minister also may make on-site inspections, with police help if necessary. (WEM, Art. 17(3)) The inspection of a dwelling is also possible if the inspectors have the special authorization of the Minister and are accompanied by either the head of police or the mayor of the municipality. The Minister's investigations are carried out by officials of the "Economische Controledienst." (WEM, Art. 17) These officials also conduct investigations necessary for the imposition of criminal sanctions. (WED, Art. 17)

26. Regarding restrictive practices, the Portuguese Conselho da Concorrência can request further information, then send the case to the Direcção-Geral de Concorrência e Precos to "instruct the case," which may include investigation and hearing. (Art. 12) The Conselho da Concorrência is responsible to decide on whether to grant an exemption. (Art. 5.2)

Regarding concentrations, the Direcção-Geral de Concorrência e Precos is responsible to "instruct the case," which may include investigation and hearing, followed by making a recommendation to the Ministry regarding legality. The Ministry ultimately decides on legality. (Art. 31)

27. Under Portuguese law, the Direcção-Geral de Concorrência e Precos can make on-site inspections only if the Director General of the DGCP has first obtained a judicial order issued by the judicial authority. After receiving a request, the judicial authority has 48 hours to decide whether to issue such order. The police may accompany officials to make such inspections, if so requested by the Direcção-Geral de Concorrência e Precos. (Art. 23)

28. Regarding restrictive practices, upon receipt of a notification, the Spanish SDC will conduct an investigation and send the case with a proposed disposition to the TDC. The TDC conducts a further investigation and issues a final decision within 20 days of receipt of the file. (LDC, Arts. 31-44)

Regarding concentrations, upon receipt of a voluntary notification, the SDC must conduct an investigation and prepare an advisory note for the Minister. Within one month of the date the notification is filed, the Minister will either take no action, in which case the concentration is deemed to be permitted, or send the case to the TDC for further investigation. Under the latter scenario, the TDC will prepare a non-binding decision, which is sent to the Minister, who forwards it to the government, which issues a final decision within three months of receipt of the file. (LDC Arts. 15 --34; Rg., Arts. 3-15)

If a concentration has not been notified, the SDC may commence an investigation *ex officio*. The procedure is similar, except that the one month time limit does not apply.

29. Access to the premises can be made either with the consent of the party or pursuant to judicial order. In practice, on-site inspections have always been made with the party's consent, and never pursuant to judicial order.
30. In Spain, individuals are required to provide information and data requested. (Art. 32 LDC)
31. Swedish law requires that prior to making an on-site inspection, the Competition Authority must seek leave of the Stockholm City Court. Some evidence must be presented to the court before leave will be granted.
32. In the UK, restrictive agreements are investigated by the OFT and the RPC, concentrations may be investigated by the OFT, DTI and the MMC. When proceedings are brought before the RPC, witnesses may be summoned for oral examination, then consider arguments from the DGFT and the parties, as well as all the evidence, to decide on whether a restriction constitutes a violation. (RTPA, Sec. 1(3))
33. To issue a formal notice to supply information in relation to restrictive agreements, the UK's Director General of Fair Trading must have reasonable cause to believe that a restrictive agreement exists. (RTPA, Sec. 36(1)) Failure to comply with such notice may result in the imposition of sanctions described in note 57 to Table IIB. If a formal notice is not possible, the DGFT may issue only an informal letter requesting information, but this has no legal force and no sanctions apply for failure to comply. Regarding concentrations and abuses of a dominant position, the MMC can, by notice, require information; there are sanctions for default. (FTA, Sec. 85)

34. Only the Monopolies and Mergers Commission and the parties in proceedings before the Restrictive Practices Court can question individuals orally. (FTA, Sec. 85(1), (2)) The Director General of Fair Trading does not have this power except in proceedings before the Restrictive Practices Court. (RTPA, sec. 37(1); FTA, Sec. 85(1), (2))
35. The Director of Investigation and Research heads the Bureau of Competition Policy, which is within the federal Department of Consumer and Corporate Affairs, a federal government agency.
36. Under Canadian law, a judge: may order a person to deliver to the Director a written return under oath or affirmation for specified information (Sec. 11(1)(c)) or to produce a record at a specified time and place (Sec. 11(1)(b)); may issue an order authorizing the Director or other named person to enter and search the premises for any record and copy or seize it, when reasonable grounds exist to believe that such order is necessary, based on information submitted under oath or affirmation (Sec. 15(1)) or may order any person to appear and be examined by the Director or authorized representative on any relevant matter under oath or solemn declaration (Sec. 11(1)(c)) (these may be done without court order if reasonable grounds exist but, due to exigent circumstances such as risk of loss or destruction of evidence, it would not be practical to obtain a warrant). In practice, the parties usually cooperate in providing information. Until 1991, the Court had never used the powers described above. (Rowley & Baker, International Mergers: The Antitrust Process, Sec. 6.4.3 (1991))
37. Under Canadian law, the Attorney General may institute and conduct any prosecution or other criminal proceedings under the Act, and may exercise all powers conferred by the criminal code to this end. (Sec. 23(2))
38. The Swiss Wettbewerbskommission has independent decision-making powers. However, it is administratively attached to the "Eidgenössisches Volkswirtschaftsdepartement" (Federal Department of Economic Affairs).
39. Under the draft law, on-site investigations would be permitted.
40. Government enforcement authorities may conduct all four types of investigation, and private plaintiffs have access to all such discovery tools except on-site inspections.

Cases learned of by government enforcers through means other than Hart-Scott-Rodino filings are initially investigated after officials have authorized a preliminary inquiry. Such inquiry often proceeds by informal interview or informal document request, although a formal process may be used, and may thereafter lead to a full-phase investigation.

In non-merger cases, the DoJ's primary form of pre-complaint compulsory process is the "civil investigative demand" (CIDs). (Antitrust Civil Process Act, 15 USC Secs. 1311-1314(1988)) These are general subpoenas which may be issued by the Assistant Attorney General of the DoJ Antitrust Division when there is reason to believe a person has possession, custody or control of relevant material or information that might lead to the discovery of relevant evidence. (28 USC 512; Antitrust Division Manual, III:14, III:36, III:62) CIDs may be used to compel the production or on-site inspection of documents, to require answers to written interrogatories, and to compel sworn testimony, which is transcribed verbatim. (See 15 USC 1312(i)(7)(A)) CIDs also may be issued following the filing of a complaint.

The FTC's primary method of compulsory process in non-merger cases is the issuance of a subpoena, requiring the production of documents and sworn oral testimony. (15 USC 49) The FTC subpoena provisions do not authorize interrogatories, but parties often consent to provide written answers. The FTC also may issue CIDs. (Act of Aug. 26, 1994, PL 103-312, Sec. 7; 108 Stat. 1691 (1994))

Regarding concentrations, whether or not they meet threshold levels requiring notification under the Hart-Scott-Rodino Act, the DoJ or FTC may request that the parties, through questionnaires, surveys and interviews, provide information voluntarily concerning the transaction. Proposed Antitrust Enforcement Guidelines for International Operations 1994 (Draft for Public Comment), n. 12; 1993 FTC Operating Manual, Ch. 3.3.6.6.

Private parties and the government may seek discovery after filing a complaint pursuant to rules 26-37 and 45 of the Federal Rules of Civil Procedure. They have the broad power to "obtain discovery regarding any matter...which is relevant to the subject matter involved in the pending action," subject to the court's discretion. Even if the information sought would be inadmissible at trial, it may be discovered if it "appears reasonably calculated to lead to the discovery of admissible evidence." (F.R.Civ.P. 26(b)(1)) Discovery tools include deposition upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission. (F.R.Civ.P. 26(a)) Non-party witness can be compelled to submit to depositions upon oral examination or produce documents.

See generally Hawk & Veltrop, "Common Law and Civil Law Approaches to Investigation and Discovery in the Enforcement of Competition Laws," ICC Commission on Law and Practice Relating to Competition, Paris, France, 8-9 March 1993.

41. The DOJ has sole responsibility for criminal enforcement under the Sherman Act. (15 U.S.C. 1) The DoJ may initiate a criminal investigation through the empanelling of a grand jury. The principal discovery tool is a subpoena, which may require the production of documents and materials, and command oral testimony before the grand jury without the presence of the judge or legal counsel. A search warrant also can be obtained. (F.R.Crim.P.) However, the DoJ cannot compel written responses to interrogatories or requests for admission, as in the civil context. Investigators from the FBI also may be used in a criminal investigation, which may use wiretaps and "plants" (where a government official may be secretly placed to work within an organization to observe whether illegal practices are occurring).

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TABLE IIB.
RECIPIENTS OF INVESTIGATION REQUESTS & POWERS TO COMPEL RESPONSES

	RECIPIENT OF INVESTIGATION REQUEST				TOOLS TO ENCOURAGE RESPONSES			COURT POWERS		
	Undertakings (IIB1)	Individuals (IIB2)	Third Parties (IIB3)	Individual Personally Responsible for Supplying Answers (IIE)	Favorable Treatment Offered for Cooperation		Sanctions for Failure to Cooperate (IID)	Issue Warrants (IIH)	Review Authority's Decisions (IIH)	Other
					To Individuals (IIF1)	To Undertakings (IIF2)				
<i>European Union</i>	yes ¹	no	yes	no	n/a	yes	yes ²	no	yes ³	no
<i>Austria</i>	yes	yes ⁴	yes ⁴	yes	no	no	yes ⁵	no	yes ⁶	yes ⁵
<i>Belgium</i>	yes	no	yes	no ⁷	no	no	yes ⁷	yes ⁸	yes ⁹	no
<i>Denmark</i>	yes	yes	yes ¹⁰	no	no	no	yes ¹¹	yes ¹²	yes ¹³	no
<i>Finland</i>	yes	yes ¹⁴	yes	no	no	yes ¹⁵	yes ¹⁶	no	yes ¹⁷	no
<i>France</i>	yes	yes	yes	no	no	no	yes ¹⁸	yes ¹⁹	yes ²⁰	no
<i>Germany</i>	yes ²¹	no	yes ²²	yes ²³	yes ²⁴	yes	yes ²⁵	yes ²⁶	yes ²⁷	no
<i>Greece</i>	yes	yes	yes	yes ²⁸	no	no	yes ²⁹	yes ³⁰	yes ³¹	no
<i>Ireland</i>	yes	yes ³²	yes ³²	yes	n/a ³³	n/a ³³	yes ³⁴	yes ³⁵	yes ³⁶	no
<i>Italy</i>	yes	yes	yes	no	no	no	yes ³⁷	no	yes ³⁸	no
<i>Luxembourg</i>	yes	yes	yes	no	no	no	yes ³⁹	yes ⁴⁰	yes ⁴¹	no
<i>Netherlands</i>	yes	yes	yes	yes ⁴²	no	no	yes ⁴²	no	yes ⁴³	no
<i>Portugal</i>	yes	yes	yes	yes ⁴⁴	no	yes ⁴⁵	yes ⁴⁶	yes ⁴⁶	yes	no
<i>Spain</i>	yes	yes	yes	no	no ⁴⁸	no ⁴⁸	yes ⁴⁹	yes ⁵⁰	yes ⁵¹	yes ⁵¹
<i>Sweden</i>	yes	yes	yes	no ⁵²	no	no	yes ⁵³	yes ⁵⁴	yes	no
<i>United Kingdom</i>	yes	yes	yes	yes ⁵⁵	no ⁵⁶	no ⁵⁶	yes ⁵⁷	yes	yes ⁵⁸	yes ⁵⁹
Third Countries										
<i>Canada</i>	yes ⁶⁰	yes	yes	yes ⁶¹	yes ⁶²	yes ⁶²	yes ⁶³	yes ⁶⁴	yes ⁶⁴	no
<i>Mexico</i>	yes	yes	yes	no	no ⁶⁵	no ⁶⁵	yes ⁶⁶	no	no ⁶⁷	no
<i>Switzerland</i>	yes	yes	yes	no	no	no	yes ⁶⁸	no	yes ⁶⁹	no
<i>USA</i>	yes ⁷⁰	yes ⁷⁰	yes ⁷⁰	yes	yes ⁷¹	yes ⁷¹	yes ⁷²	yes ⁷³	yes	yes ⁷³

FOOTNOTES TO TABLE IIB

1. The Commission may obtain all necessary information from undertakings, associations of undertakings, and the Member States. It may send a "request for information" to undertakings or associations of undertakings. (Reg. 17, Art. 11 and Merger Reg., Art. 11)
2. Regarding restrictive agreements, fines of up to ECU 5.000 may be imposed by decision of the Commission for supplying incorrect or misleading information in an application or notification, in response to a request for information, for supplying incomplete books or records, or for refusing to submit to an investigation ordered by decision of the Commission. (Reg. 17, Art. 15) Periodic penalty payments of up to ECU 1.000 per day may be imposed in order to compel undertakings or associations of undertakings to supply complete and correct information which has been

requested by decision, or to submit to an investigation which has been ordered by decision. (Reg. 17, Art. 16)

Regarding mergers, fines of ECU 1.000-50.000 may be imposed for intentionally or negligently failing to notify a concentration, supplying incorrect or misleading information or incomplete documents. (Merger Reg., Art. 14) Periodic penalty payments of up to ECU 25.000 per day of delay in supplying information requested or in submitting to an ordered investigation may be imposed. (Merger Reg., Art. 15(1))

3. The Court of First Instance has unlimited jurisdiction to review decisions of the Commission. With respect to decisions imposing fines or periodic penalty payments, it may cancel, reduce or increase the same. The Court of Justice may review decisions of the Court of First Instance. (Reg. 17, Art. 17; Merger Reg., Art. 16; Art. 168a, 173, EU Treaty, OJ C224/1, 31.8.1992; Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities, OJ L319/1 (25.11.88))
4. In Austria, individuals and third parties may be questioned by the Paritätischen Ausschuß and by the Cartel Court. The normal practice is for the Paritätischen Ausschuß to do the questioning in preparation of its expert's opinion.
5. Fines may be imposed by the criminal court for providing false information in a notification. (Sec. 132) The Cartel Court can impose fines against an undertaking which fails to satisfy the duty to notify vertical agreements and mergers, or if it provides false or misleading information. (Sec. 142)
6. The decisions of the Cartel Court may be reviewed by the Kartellobergericht. (Sec. 88) The criminal court's decisions imposing fines may be appealed following criminal court procedures.
7. The Belgian Conseil can impose fines on undertakings, and associations of undertakings, and those individuals obliged to notify a merger for intentionally or negligently supplying incorrect information by a notification or in response to a request for information, providing incomplete information, missing a deadline for supplying information, or otherwise obstructing an investigation. Fines also may be imposed for consummating a concentration without meeting notification requirements or when taking measures which render the concentration irreversible. (Art. 38, para. 1) The amount of the fine can range from BF 20.000 (ECU 507.5) to BF 1 million (ECU 25.370). (Art. 37)
8. Under Belgian law, a court-issued warrant is required in order to conduct an on-site inspection of a dwelling, and a mandate issued by the President of the Council for Competition is required in order to conduct an on-site inspection of business premises.
9. The Conseil's decisions, including those imposing fines for obstruction of an investigation, and the decisions of the President of the Council for Competition, are appealable to the Appeal Court of Brussels. (Art. 43)
10. In Denmark, third parties would be the recipient of investigation requests only when the Competition Council is investigating a certain market.
11. In Denmark, daily or weekly fines of an unspecified amount may be imposed against a party who neglects to submit requested information, or submits incorrect or misleading information. In practice, however, sanctions have been imposed on very few occasions, as the party in question will normally produce the requested information after negotiating with the Competition Council.
12. The Competition Council may obtain a court order permitting it to gain access to the premises and vehicles of an undertaking and "on the spot obtain and make copy of any information which is of importance for the performance of supervision according to [the Act], including accounts,

accounting records, ledgers, other business records and electronic data." Police assistance may be required by the Council. (Sec. 21) However, this has never been done.

13. Decisions made by the Competition Council may be appealed to the Competition Appeals Tribunal, then ultimately to the High Court. (KKL Sec. 18)
14. In Finland, individuals deemed to be undertakings because they offer for sale, buy, sell or otherwise for consideration procure or dispose of goods or services on a professional basis may be the recipient of investigation requests. (Sec. 3)
15. In Finland, in practice, cooperation may be considered in determining the amount of the penalty for a substantive violation pursuant to Sec. 8. For example, such cooperation may be that one undertaking participating in a cartel provides the Authority with information about other undertakings participating in the same cartel, thus assisting the authority in its enforcement efforts. To date, however, this has never been done.
16. Failure to notify a prohibited activity in Finland will result in imposition of an administrative fine if it is subsequently detected. (Sec. 8) The Office of Free Competition may impose a conditional fine to enforce the obligation to submit information or make documents available, and other requirements to submit information. These fines shall be ordered payable by the Competition Council. (Secs. 25, 26)

Anyone who willfully submits false information to authorities shall be sentenced for a competition restriction offense to a fine of an unspecified amount or to imprisonment of not more than 6 months. (Sec. 27)

17. Decisions of the Authorities, including those imposing fines for obstructing an investigation, may be appealed to the Finnish Supreme Administrative Court. (Sec. 27)
18. Any person who impedes the exercise of the powers of investigation by French authorities may be sanctioned by a fine of not more than FF50.000 (ECU 7.614) or imprisonment of not more than six months. Such sanctions are imposed by the Tribunal de Grande Instance for the competent jurisdiction. (1986 Ordonnance, Art. 52)
19. French investigators may exercise their powers to search and seize based first on the request of the Ministre de l'economie or the Conseil de la Concurrence, then on the judicial authorization given by order of the president of the "Tribunal de grande instance" stating the address to be searched. (1986 Ordonnance, Art. 48)
20. The grant of a warrant by the French Tribunal de grande instance is subject to court review.
21. In Germany, undertakings and associations of undertakings may be the subject of investigative requests. (GWB Sec. 46)
22. In Germany, only third parties which are undertakings or associations of undertakings may be the subject of investigative requests. (GWB Sec. 46)
23. The law specifies which individuals are responsible for providing information on behalf of undertakings. Responsible individuals include the owners of undertakings, or representatives of legal persons as provided by law. Individuals who have been appointed at the request of the Bundeskartellamt, the Landeskartellamt, or the local district court may also be held responsible. (GWB Art. 46, para. 2)
24. The German proceedings for assessing fines is subject to the "Opportunitaetsprinzip," which means that the authority has discretion regarding the initiation or stay of proceedings and the size of the fine. Accordingly, the authority may stay the fines proceedings pending satisfaction of claims

made by injured parties, or abolition of an illegal condition. The authority also would have discretion to impose less severe sanctions against a cooperative party under this principle.

25. In Germany, failure to cooperate in an administrative investigation constitutes an administrative offense. (GWB Sec. 39) As such, it may be fined pursuant to criminal proceedings a maximum of DM50.000 (ECU 26.100) for each wrongdoing (GWB Sec. 39; STPO; OWIG) or subject to penalty payments pursuant to administrative proceedings a maximum of DM 2.000 (ECU 1.044). (VwVG Sec. 11) Failure to cooperate in a criminal proceeding may be penalized criminally a maximum of 6 weeks imprisonment or a penalty. (STPO) Compliance can be enforced under the Federal Act on the Execution of Administrative Decisions (VwVG). Failure of a witness or expert to provide answers to an oral interview may be fined but not imprisoned. (GWB Sec. 54)
26. In Germany, searches and seizures may only be conducted pursuant to court order, except in the case of danger or delay. (GWB, Art. 46)
27. The complainant may appeal the decisions of the Bundeskartellamt or Landeskartellamt to the regional court of appeal with jurisdiction. (GWB Art. 62, 82) These, in turn, may be appealed to the Federal High Court. (GWB Art. 73, 83)
28. Greek law provides that when information is requested of an undertaking or association of undertakings, the persons responsible are entrepreneurs in the case of sole proprietorships, partners in the case of partnerships, administrators in the case of limited liability companies and cooperatives, and members of the board of directors in the case of corporations. Criminal proceedings may be initiated, and criminal penalties imposed, against these individuals for obstructing investigations. (Law 703/77, Arts. 29, 30; Act of 2296/95, paras. 6, 7) Penalties include a mandatory prison term and a fine. (Law 703/77, Art. 29; Act 2296/95, Art. 6, para. 6)

The Competition Committee has the power to impose administrative penalties for obstruction of an investigation without prejudice to the criminal sanctions imposed according to Art. 29 of the Greek Act. These include fines of up to DRG 3.000.000 (ECU 10.160) against directors, employees and individuals governed by private law. If public servants obstruct an investigation, the matter is referred to the competent authority in order to initiate disciplinary proceedings. (Law 703/77, Art. 25; Act of 2296/95, Art. 6, para. 2)

29. Under Greek law, if a party fails to cooperate in an investigation, the Service may petition to the public prosecutor for police intervention. A court order may be issued requiring police intervention. The Competition Committee may impose fines. These fines are DRG 3.000.000 (ECU 10.160)- 10% of the gross receipts of the undertakings during the year in which the offense was committed or during the previous year for non-notification of agreements. (Law 703/77, Art. 21; Act of 2296/95, Art. 5, para. 2); up to 5% of aggregate turnover of the parties for non-notification of a merger under the notification provision (Law 703/77, Art. 4a; Act of 2296/95, Art. 2, para. 2); up to 7% of the aggregate turnover of the parties for non-notification of a merger under the obligation of a preventive control procedure (Law 703/77, Art. 4b; Act of 2296/95, Art. 2, para. 3); and up to DRG 3.000.000 (ECU 10.160) for obstruction of an investigation, subject to penal sanctions imposed by Art. 26 (Law 703/77, Art. 26; Act 2296/95, Art. 6, para. 3) Penal sanctions of at least 3 months imprisonment and a fine ranging from DRG 1-3 million (ECU 3.386-10.160) for the first offense of obstruction of an investigation or failure to supply required information in a notification, twice that amount for a repetition of the offense. (Law 703/77, Art. 29; Act 2296/95, Art. 6, para. 6)
30. In Greece, authorized officials obstructed in the exercise of their duties of investigation or denied access to information may request the assistance of the local police authorities through the competent public prosecutor. (Law 703/77, Art. 26; Act 2296/95, Art. 6, para. 3)

31. The Athens Administrative Court of Appeal may review decisions of the Competition Commission (Ch. C, Sec. 14); the Council of State may review decisions of the Athens Administrative Court of Appeal (Sec. 15).
32. In Ireland, natural and legal persons involved in the business of supplying/distributing goods or providing services may be the recipients of investigation requests. (1991 Act, Sec. 21(1)(b), (d) and (e))
33. Irish law provides no sanctioning system for substantive violations.
34. Under Irish law, a person who obstructs an authorized officer with a warrant from gathering books, documents or other records, or making an on-site inspection, may be liable for a maximum fine of IrL 1.000 (ECU 1.265) and/or not more than 12 months imprisonment. (1991 Act, Sec. 21(3)) A person who fails to respond to oral questioning as authorized by the Act may be liable for a maximum fine of IrL 1.000 (ECU 1.265) and/or not more than 6 months imprisonment. (Schedule to 1991 Act, para. 7(4))
35. Under Irish law, before an authorized officer exercises any of his powers to conduct an on-site inspection or to require the production of documents or other information, he must have a warrant issued by a Justice of the District Court. (1991 Act, Sec. 21)
36. In Ireland, sanctions are imposed by the courts and subject to the normal appellate procedure.
37. Italian law provides that persons possessing relevant documents or information and refusing, without justification, to produce them during an investigation, or producing false documents, shall be subject to administrative pecuniary sanctions. Such sanctions may be up to IL 50 million (ECU 25.430) for refusal or failure to supply information or documents, and up to IL 100 million (ECU 50.860) for supplying incorrect or misleading information. (Art. 14, para. 5)
38. The Administrative Court of Latium may review decisions of the Competition Authority. (Art. 33)
39. In Luxembourg, a penalty of LF 2.505 to 10.000 (ECU 63-254) may be imposed for obstructing an investigation or for providing false or incomplete responses. (Loi de 17.6.70, Art. 8)
40. The Luxembourg Administrative Court may review decisions of the Ministry. (Art. 7)
41. In Luxembourg, penal sanctions may be imposed by the court for obstruction of an investigation, which may be appealed. (Art. 8)
42. Under Dutch law, failure to cooperate in an investigation of the Minister of Economic Affairs or the Economic Competition Commission is an economic offense for which criminal sanctions may be imposed against individuals or undertakings by the Economische Politierechter. Sanctions may be imposed against individuals in an undertaking who directed the prohibited conduct, or who sit on the board of directors. For individuals, fines may be up to NLG 50.000 (ECU 23.280) and imprisonment up to six months; for undertakings, fines may be up to NLG 100.000 (ECU 46.555). Wet Economische Delicten (Economic Crimes Act), Secs. 1(4), 2(4), and 6 (1, 4); Criminal Code, Art. 23.
43. Imposition of criminal sanctions by the Economische Politierechter may be reviewed by the Court of Appeal, and ultimately by the High Court.
44. In Portugal, the legal representatives of the company are responsible for supplying the answers. (Art. 23)

45. Portuguese law does not address this issue. However, in practice, the Conselho da Concorrência takes into consideration the degree of cooperation when imposing fines.
46. Under Portuguese law, a fine of up to Escudos 10.000.000 (ECU 51.046) for undertakings, and Escudos 5.000.000 (ECU 25.523) for individuals, may be imposed by the Direcção-Geral de Concorrência e Precos for providing false information or refusing to cooperate in investigation which it is conducting. (Arts. 37, 38)
47. In Portugal, the judge of first instance has the power to issue an order, on application of the Director General of the Direcção-Geral de Concorrência e Precos permitting an on-site inspection.
48. In Spain, individuals and undertakings are required to provide information pursuant to an investigation request. Failure to do so may result in higher fines for aggravation of the original violations.
49. In Spain, a fine of Pts 50.000 - 1.000.000 (ECU 313,1-6.262) may be imposed for failure to cooperate in an investigation or to supply requested information. A fine of Pts 150.000 per day (ECU 939,0) may be imposed for obstruction of the SDC investigation proceedings. (Art. 32)
50. In Spain, a judicial order is necessary for the authority to conduct an on-site inspection, in the absence of the consent of the party. (Art. 34) To date, access has always been by consent.
51. In Spain, decisions of the TDC may be appealed to the "Audencia Nacional Sala de lo Contencioso -Administrativo." (Art. 49) In reviewing the decisions of the TDC or the Government, the competent judicial authority may conduct a new investigation.
52. In Sweden, any individual can be asked to provide information. The corporate president or one of his/her close colleagues normally will be the individuals questioned because they have the most information. However, no individual representing an undertaking can be held personally liable for sanctions.
53. In Sweden, the Competition Authority may require undertakings and other parties to supply information, documents or other material. Such obligation may be imposed subject to fine. Actions for award of such fine are to be brought before a District or City Court by the Competition Authority. (SFS 1993:20, para. 45, 57, 59)
54. Swedish law requires that prior to making an on-site inspection, the Competition Authority must seek leave of the Stockholm City Court. Some evidence must be presented to the court before leave will be granted.
55. In the UK, any director, manager, secretary or other officer of a company, officer of a trade association, or individual or member of a partnership who carries on business, which is the subject of a formal notice issued pursuant to Sec. 36 of the RTPA may be personally prosecuted if the company's failure to supply answers is due to their action or negligence, or committed with their consent or connivance. (RTPA, Sec. 36(6)) Mere employees are not liable.

Regarding a formal notice to supply information issued to any company pursuant to Sec. 85 of the Fair Trading Act or Sec. 3(7) of the Competition Act, any director or officer may be punished if the company fails to comply. (FTA, Sec. 85(7A); CA, Sec. (8))

In an investigation into abuse of a dominant position by the MMC, any person can be the subject of a request for information. (FTA Sec. 85)

56. In the UK, the sanctions available for anticompetitive behavior are aimed at preventing such behavior from continuing due to non-cooperation, not at punishing past actions. The RPC may

57. In the UK, refusal to answer questions posed in proceedings before the RPC, as with any court, constitutes contempt, punishable by an unlimited fine, up to 2 years imprisonment, or both. In the case of imprisonment, cooperation normally leads to immediate release. Deliberately supplying false information in response to questioning in court constitutes perjury, a criminal offense punishable by up to 7 years imprisonment. (Perjury Act 1911, Sec. 1(1))

Refusal to supply information required by the MMC without reasonable excuse is punishable as though it were contempt of court. (FTA Secs. 85(7), (7A)) Supplying the MMC with false information under oath constitutes perjury. Falsifying, suppressing or destroying documents required by the MMC constitutes a criminal offense, punishable by an unlimited fine and/or up to 2 years imprisonment. (FTA Sec. 85(6)) The same penalties also apply to obstruction of an investigation by the DGFT under the Competition Act. (Sec. 3(8)) Failure to comply with a notice to supply information to the DGFT in relation to a suspected restrictive practice is a criminal offense, punishable in the same way. (RTPA, Sec. 38(2), (3)) Falsification of information supplied under such a notice is also a criminal offense punishable by a fine of up to £1,000 (ECU 1.282). (RTPA Sec. 38(1))

58. In the UK, any decision of an administrative authority other than an order by the Secretary of State for Trade and Industry may be reviewed by the High Court (or, in Scotland, by the Court of Session).

Decisions of the RPC may be appealed to the Court of Appeal (or, in Scotland, the Court of Session). (Restrictive Practices Court Act of 1976, Sec. 10(1))

59. In the UK, with respect to an investigation into a restrictive agreement under the RTPA, the RPC may issue summonses for the examination of witnesses, as well as take the final decision as to the legality/illegality of the restriction. The Court has jurisdiction to make interim and variation orders. However, in addition to the RTPA procedure, a private action may be brought by a wronged party in the High Court (or in Scotland, the Court of Session) for breach of statutory duty. However, this is outside the normal procedure as the OFT is not involved.

The High Court (or, in Scotland, the Court of Session) has jurisdiction over cases of failure to comply with an investigation and falsification of evidence,

60. When the recipient of the investigation request is an undertaking, the court may require the production of its records and those of its affiliates, whether Canadian or foreign. To obtain such an order, the Director must demonstrate the relevance of the record to his inquiry. (Sec. 11(2))
61. Any officer, director, or agent of an undertaking who directed, authorized or otherwise participated in the commission of an offense related to obstruction of an investigation, as described in note 63 infra, may be liable for the sanctions provided. (Sec. 65(4))
62. In 1991, the Bureau of Competition Policy initiated a favourable treatment program which provides incentives for corporations voluntarily to disclose their participation in conspiracy and bid-rigging offenses prior to the Bureau's knowledge of such matters. The program thereafter was expanded to include individuals and to cover a broader range of criminal offenses under the Competition Act. The Attorney General has discretion to decide what favourable treatment to offer, normally after consultation with the Director.

Moreover, immunity from prosecution can be offered under Canadian criminal law under certain conditions. The Attorney General can stay criminal proceedings, assure immunity against future prosecution, or provide "use" immunity (under which evidence provided by the witness cannot be used as an admission of guilt in a subsequent prosecution).

63. Criminal fines of up to C\$ 5,000 (ECU 2.910) and imprisonment for up to two years may be imposed against "any person" who: obstructs an investigation (Sec. 64(2)), impedes entry or search

of premises or impedes search of computer files (Sec. 65(1)), does not comply with an order for oral examination, production of documents, or written responses, or fails to supply required premerger notification, or consummates a merger before expiration of obligatory waiting period following notification (Sec. 65(2)). A person who destroys or alters any record required to be produced and for which a warrant has been issued may be liable for criminal fines of up to C\$ 50 000 (ECU 29.100) or imprisonment up to 5 years. (Sec. 65(3))

If a warrant to conduct an on-site search has been issued, and authorities are refused access, a judge may direct a peace officer to take specified steps to gain access. (Sec. 15(6))

64. Under Canadian law, courts may impose sanctions as discussed in note 63 supra. Moreover, where a federal, superior or county court judge is satisfied that reasonable grounds exist to believe that it is necessary, based on information submitted under oath or affirmation, he may issue a warrant authorizing the Director or other named person to enter and search the premises for any record and copy or seize it. (Sec. 15(1)) This may be done without a warrant if, due to exigent circumstances (including risk of loss or destruction of evidence due to the delay necessary to obtain a warrant), it would not be practical to obtain a warrant. Courts also may issue orders, as discussed in note 58 supra.
65. The criteria to be considered in setting the amount of fines are set forth in the law. Cooperation in an investigation is not one of the elements listed. (Ch. 6, Art. 36)
66. For making false statements or providing false information, a fine may be imposed of up to 7.500 times the general minimum wage, and twice that amount for repeated offenses, and up to 100 thousand times the general minimum wage for failure to notify a concentration. (Ch. 6, Art. 35)
67. The Commission's decisions may be appealed to the Commission itself. (Ch. VII, Art. 39)
68. In Switzerland, criminal fines up to SFr 20.000 (ECU 12.480) may be imposed for failure to comply with requirement to provide information. (Sec. 40) Under the new draft code, administrative fines up to SFr 100.000 (ECU 62.380) would be allowed to be imposed for failure to comply with the requirement to provide information or produce documents. (Draft Art. 52)

In practice, fines never have been imposed.

69. In Switzerland, the federal court may review decisions of the Wettbewerbskommission. (Sec. 38)
70. In the US, an individual or corporation over whom the court has personal jurisdiction is subject to compulsory process and can be forced to produce information and documents within its possession, custody or control. (F.R.Civ.P. 34, 45) Compulsory process is backed with the full weight and force of the criminal laws.

CIDs may be addressed to persons under investigation and witnesses. Non-party witnesses also can be compelled to produce documents and to submit to a deposition upon oral examination.

71. In August 1993, the United States announced a corporate leniency policy, and in August 1994, a leniency policy for individuals who report criminal antitrust activity of which the Justice Department had not been aware. Under the corporate leniency policy, no criminal charges will be lodged against officers, directors and employees who come forward with their corporation with information about criminal antitrust activity and confess. Under the individual leniency policy, individuals may confess on their own behalf to seek leniency for reporting illegal antitrust activity.
72. Failure to comply with Hart-Scott-Rodino premerger notification requirements is punishable by court imposed civil penalties of up to \$10.000 (ECU 7.911) per day for each day a violation continues.

A DoJ CID is not self-enforcing. The DoJ may seek a court order to enforce. Violation of such a court order is punishable as civil or criminal contempt of court. (15 USC 1314(a)) US courts have broad powers to punish contempt. A witness who refuses to produce documents in response to a court order in a civil action, for instance, may be imprisoned for up to 18 months. (28 USC 1826)

If a party refuses to comply with an FTC subpoena, the FTC can seek an order from a district court. Failure to comply with the resulting court order is punishable as contempt of court. (15 USC 49, 50)

Sanctions for failure to comply with discovery requests are provided in the Federal Rules of Civil Procedure (Rule 37). The court may sanction a party or counsel for failure to comply with a court order compelling discovery or for failure to respond to discovery legitimately requested by the other party. Sanctions include the imposition of costs or other monetary sanctions, or a default judgment. Other sanctions also are possible. Failure to comply with a court order or subpoena served pursuant to Rule 45 is punishable as contempt of court. (F.R.Civ.P. 45)

Individuals who willfully destroy, alter, conceal or manufacture documents or other evidence are subject to fines and prison sentences of up to five years under US laws on the obstruction of justice. (18 USC 1505) They would also face imprisonment for violation of judicial discovery orders. Parties who knowingly give false testimony under oath are guilty of perjury and subject to fines and prison sentences. (18 USC 1621-23) Attorneys who participate in these schemes are subject to the same fines and disbarment.

Companies which have not yet been subpoenaed may be prosecuted for destruction of documents if they know a grand jury investigating the industry would likely subpoena the documents. See *US v. Gravelly*, 840 F.2d 1156, 1160-61 (4th Cir. 1988)

See generally Hawk & Veltrop, "Common Law and Civil Law Approaches to Investigation and Discovery in the Enforcement of Competition Laws," ICC Commission on Law and Practice Relating to Competition, Paris, France, 8-9 March 1993.

73. See note 40 to Table IIA.

SANCTIONS SURVEY

I. TYPE OF SANCTIONS ALLOWED

Restrictive practices and abuses of dominant position

The type of sanctions (administrative fines or prohibition orders, criminal fines or imprisonment) established for the various types of competition law infractions is presented in Table I.

In the EU and the Member States, the type of sanctions which may be imposed for restrictive practices and for abuses of a dominant position are generally the same. This is true for the third countries as well, with the exception of Canada, which make criminal a number of restrictive practices but not abuses of a dominant position.

Administrative Sanctions

European Union : The Commission may impose **prohibition orders** for violations of Articles 85 and 86. It may order **fines** for substantive violations of those articles, as well as for negligently or intentionally supplying incorrect or misleading information with respect to an application for a negative clearance, notification, response to a request for information or other investigation.

Member States : **Prohibition orders** may be imposed in all Member States for some or all types of violations. Administrative **fines** may be imposed for substantive infractions in 11 of the 15 Member States. Ireland, Luxembourg, the Netherlands and the UK do not provide for such fines.

In Ireland, the 1991 Act essentially privatized enforcement, permitting an aggrieved party to file an action in the High Court for injunction, declaration, and damages but providing no means for the imposition of fines by public authorities for restrictive practices or abuses of a dominant position. The Oireachtas is currently considering amendments to the law, expected to be enacted soon, which would introduce public enforcement without fines.

Third Countries : **Prohibition orders** may be imposed in all third countries. In the United States, the Department of Justice must, and the Federal Trade Commission may, apply to a Federal District Court for injunctive relief. In addition, the Federal Trade Commission may, after administrative proceedings, itself issue cease and desist orders.

Fines are provided for by three of the four third countries, (all but Canada). As discussed below, Canadian law heavily emphasizes criminal sanctions and provides for criminal fines.

Criminal Sanctions

European Union : EU law does not provide for criminal sanctions.

Member States : Of the Member States, only Austria, France and the Netherlands provide criminal sanctions for substantive violations of the antitrust laws. In Austria, criminal fines and imprisonment may be imposed for "abuse of cartel." In France, criminal fines and imprisonment may be imposed against individuals whose acts were crucial to the conception, organization, and implementation of the prohibited practices. In the Netherlands, the competition law (which is based on the abuse control principle) prohibits restrictive practices and dominant positions which are contrary to the "general interest," and provides that a declaration of non-binding effect may issue when an abuse has been committed. Criminal (and civil) sanctions may be imposed following such declaration.

Germany, Greece, the Netherlands and the UK allow criminal sanctions, including fines and imprisonment, for obstructions of investigations. Italian law provides that administrative pecuniary sanctions may be imposed for such obstruction.

Third Countries : The third countries which provide criminal sanctions for substantive antitrust violations are Canada, Mexico and the United States. Criminal sanctions are allowed under Canadian law for certain restrictive practices, but not for abuses of dominant position. Mexican law provides for criminal sanctions against "absolute monopolistic practices," defined as contracts, agreements or combinations among competitors whose effect could be to exclude or hinder market access, or establish exclusive advantages in favour of one or several persons, and for providing false information. US law allows criminal sanctions for all violations of Sections 1 and 2 of the Sherman Act. In practice, however, criminal prosecutions in the United States are limited to traditional per se offenses, including price fixing, customer allocations, and bid-rigging.

Concentrations

Administrative Sanctions

European Union : The Commission may impose **prohibition orders** against violative concentrations, and may order **divestiture** of violative concentrations already consummated. It may impose **fines** for failing to satisfy the Merger Regulation's notification requirements, supplying incorrect or misleading information, or failing to satisfy the Merger Regulation's time suspension requirements or conditions of compatibility. Further, it may impose **periodic penalty payments** for delays in supplying requested information under the Merger Regulation, or in complying with conditions to (i) derogations from time suspension requirements, (ii) a decision of compatibility, or (iii) a divestiture order.

Member States : In eleven Member States (Austria, Belgium, France, Germany, Greece, Ireland, Italy, Portugal, Spain, Sweden and the UK), **orders** may issue to prohibit the consummation of a proposed merger which violates the competition law, either absolutely or except on certain conditions. In seven Member States (Austria, Belgium, Germany, Greece, Portugal, Spain and the UK), **divestiture** may be imposed with respect to violative concentrations already consummated.

Fines may be imposed for a substantive violation of the law on concentrations in five Member States (France, Greece, Italy, Spain and Sweden). Fines may be imposed for failure to notify a concentration in Austria, Belgium, Germany, Greece, Ireland, and Italy and Portugal.

Denmark, Finland, Luxembourg, and the Netherlands do not have merger control statutes.

Third Countries : All of the third countries provide for orders to prohibit the consummation of a proposed merger which violates the law. Divestiture of violative concentrations already consummated is allowed in Mexico and the US. Fines for substantive violations of the merger law are provided for in Mexico, Switzerland and the US.

Fines and injunctions may issue for failure to comply with Hart-Scott-Rodino premerger notification requirements in the US.

Criminal Sanctions

European Union : EU law does not provide for criminal sanctions.

Member States : None of the Member States except Austria provides criminal penalties for substantive violations of the laws related to mergers. In Austria, criminal fines may be imposed for unjustified performance of a merger.

In Greece and the UK, the criminal sanctions described above pertaining to obstructions of investigations also apply to concentrations. Similarly, the administrative pecuniary sanctions described above for such obstructions in Italy also apply to concentrations.

Third Countries : Canadian law provides that criminal sanctions may be imposed regarding concentrations only where there is a failure to notify the director that a notifiable merger is proposed, or to supply required information, or when the merger is consummated prior to the expiration of time periods specified in the act. The other third countries do not provide criminal sanctions with respect to mergers.

II. ENTITIES WHICH OR INDIVIDUALS WHO CAN BE SANCTIONED

The Enterprise

Administrative Sanctions

European Union : Under EU law, prohibition orders, fines and periodic penalty payments may be imposed against the enterprise.

Member States : Prohibition orders may issue against the enterprise in all Member States, and fines may issue against the enterprise in 11 of the 15, as described in Section *Restrictive agreements* (see page 9 supra).

Third Countries : Prohibition orders may be imposed against the enterprise in all of the third countries, and fines may be imposed against the enterprise in Mexico, Sweden and the US, as described in Section on *Restrictive agreements* (see page 9 supra).

Criminal Sanctions

European Union : EU law does not provide for criminal sanctions.

Member States : Criminal fines may issue against the enterprise for substantive antitrust violations only in Austria and the Netherlands, subject to the qualifications described in Section on *Concentrations* (see page 10 supra). Criminal fines may be imposed against the enterprise for failure to cooperate in an investigation in Germany, the Netherlands and the UK.

Third Countries : Regarding third countries, criminal fines may issue against the enterprise in Canada, Mexico and the US, as described in Section on *Concentrations* (see page 10 supra).

The individual

Administrative Sanctions

European Union : The Merger Regulation provides that **fines** may be imposed against "persons already controlling at least one undertaking" who acquire control of another undertaking, and who intentionally or negligently fail to notify a concentration, supply incorrect or misleading information or incomplete documents, or fail to satisfy time suspension requirements or conditions to a decision of compatibility of a concentration.

Member States : The UK and the Netherlands are the only Member States in which a prohibition order can be directed against an individual. British common law provides that directors of an enterprise may be fined or imprisoned by the court for contempt for failing to follow a court order issued against the enterprise. In Germany and Ireland, prohibition orders can be issued against individuals who constitute an enterprise.

Six Member States (Austria, Denmark, Finland, Germany, Greece and Spain) provide for the imposition of **fines** on individuals acting on behalf of the enterprise for substantive infringements of the law. In Austria, fines may be imposed against the "entrepreneur or association of entrepreneurs" by the Cartel Court. In Greece, an individual acting as an individual (or as an enterprise) may be fined. In contrast, in France, fines may be imposed against the individual only when he is acting as an enterprise. In Denmark, the infringement may be intentional or by gross negligence.

Irish law provides that an individual who is "in control" of an enterprise may be fined for failing to notify a proposed merger within the specified time limit. The new competition bill would add that such individuals may be fined for knowingly and wilfully permitting the provision of false information.

Italian law provides that an individual possessing relevant documents or information and refusing, without justification, to produce them during an investigation or producing false documents shall be subject to fines. In practice, this sanction has never been applied against an individual, only against enterprises. Belgian law provides that fines may be imposed against the individual who fails to provide information or otherwise obstructs an investigation.

Luxembourg law provides that an individual may be fined for refusing to cease conduct which has been enjoined.

Third Countries : All of the third countries except Mexico provide that prohibition orders or injunctions can be addressed to the individual. Mexico and the United States provide for **fin**es against the individual.

Criminal Sanctions

European Union : EU law does not provide for criminal sanctions.

Member States : Criminal sanctions may be imposed against the individual for substantive violations in Austria and France. Austrian law provides for fines and imprisonment of "members of a cartel, organ, or tacit agent of a cartel or cartel member." French law provides that criminal fines and imprisonment may be imposed against individuals whose acts were crucial to the conception, organization, and implementation of the prohibited practices. Greek law provides that criminal fines and imprisonment may be imposed against individuals who obstruct investigations of the antitrust laws. British law provides that directors of an enterprise may be punished by fines and/or imprisonment for obstructing an investigation, which constitutes a criminal violation.

Third Countries : Canada, Mexico and the US provide for criminal fines and imprisonment of individuals for substantive antitrust violations, as described in section on *Concentrations* (see page 10 supra).

III SEVERITY OF SANCTIONS

Statutory limits on sanctions

European Union : For substantive violations of Articles 85 and 86, a fine may not exceed 10% of the enterprise's turnover for the preceding business year. In setting the fine, gravity and duration of the infringement must be considered.

For supplying incorrect or misleading information with respect to an application for a negative clearance, notification, response to a request for information, or other investigation, an absolute limit of ECU 5.000 is set. For supplying incorrect or misleading information or incomplete documents with respect to a merger, the limit is ECU 50.000.

For failure to notify a concentration, an absolute limit of 50.000 is set.

For failure to satisfy time suspension requirements or conditions to a decision of compatibility of a concentration, the limit is 10% of turnover. In setting the fine, nature and gravity of the infringement must be considered.

For delay in supplying information requested, or in submitting to an ordered investigation, a periodic penalty payment of not more than ECU 25.000 per day may be imposed. For delay in complying with conditions to time suspension requirements, or conditions to a decision of compatibility, or divestiture, a periodic penalty payment of not more than ECU 100.000 per day may be imposed.

Member States : Statutory limitations on sanctions, whether for substantive or procedural violations, exist in 13 of the Member States. In Ireland, the law does not provide for fines (except in the limited circumstances described in section IIB1 supra) or imprisonment; in Denmark, no limits exist for fines.

For substantive violations, a percentage of turnover alone is used in Belgium (10%), France (5%), Greece (15% for consummation of prohibited mergers) Italy (10% for failure to comply with a prohibition order; 1-10% of turnover for consummation of prohibited merger), and Sweden (10%); a percentage of turnover is used in conjunction with an absolute limit in Finland (up to 680.500 ECU, unless severity of restriction warrants higher fine, in which case limit is 10% of total turnover of each participant), Germany (521.800 ECU or up to 3 times additional receipts for intentional violations, and 260.900 or 1.5 times additional receipts for negligent violations), Greece (ECU 203.200-338.600 for abuses of dominant position, but for serious abuses, 10% of gross income), and Spain (939.500 ECU plus 10% of turnover; for concentrations, 10% of turnover). An absolute limit is used in the Netherlands (6 months imprisonment and ECU 23.280 for individuals; ECU 460.000 for enterprises; plus supplementary pecuniary sanctions to disgorge the benefit of the violation) and Portugal (ECU 510,5 - 1.021.000 for restrictive business practices and abuses of a dominant position). In Austria, the limit on fines for substantive violations is set as the amount of unjust enrichment enjoyed by the violator.

In Austria, an absolute limit is set for criminal violations (ECU 741.300). In France, absolute limits on fines and imprisonment are set for substantive criminal violations (ECU 761,3-76.130 and 6 mos.- 4 yrs imprisonment).

Limits on fines for contempt are set in Belgium, Italy, Luxembourg, the Netherlands Portugal and Spain. A periodic penalty payment for failure to comply with a decision is used in Belgium (ECU 6.343 per day); percentage of turnover limit is used in Italy (10% related to the product at issue); absolute limits are used in Luxembourg (8 days - 1 year and ECU 253,7 - 253.700), the Netherlands (6 mos. imprisonment and ECU 11.640 for individuals, ECU 46.550 for an enterprise, unless gains are more than 1/4 of fine, in which case maximum for enterprise is ECU 465.500), Portugal (ECU 510,5-510.500) and Spain (ECU 62,63 - 939,5 in coercive fines, which may be repeated periodically).

For obstruction of an investigation, a mandatory minimum fine and imprisonment term are set in Greece (3 mos. and ECU 3.386 for first offense, twice that for repeated offenses); and absolute limits in Ireland (ECU 1.264 and/or 12 months imprisonment), Portugal (ECU 510,5 - 51.050) and the UK (2 years and no fine limit in crown court, 6 months and ECU 6.408 in magistrate's court). In the UK, absolute limits are set (3 months and ECU 1.282) for failure to comply with a request for information.

For failure to satisfy notification requirements, a turnover limit is used in Greece (3%) and Italy (1%) and an absolute limit is used in Austria (ECU 3.706) and Portugal (ECU 510, 5 - 510.500).

Third Countries : In third countries, absolute limits are set for substantive violations. In Canada, fine limits exist for some violations while others are unlimited (ECU 5.824.000 and 5 years imprisonment for restrictive practices, unlimited fine for price fixing and price discrimination, but imprisonment limited to 5 years and 2 years, respectively). In Mexico, absolute limits are used. In the United States, a complex series of limits exists (see Table IV), of which the highest absolute limit is ECU 7.909.000 for substantive violations.

Most severe sanctions imposed

European Union : The highest fines imposed by the Commission have been ECU 248 million against the European Cement Association, 8 national cement associations, and 33 European cement producers for violations of Article 85 ("Cement"), ECU 132.15 million against 19 companies in the cartonboard industry for violations of Article 85 ("Cartonboard"); ECU 117 million against 16 companies in the steel industry for violations of Article 65 of the ECSC Treaty ("Poutrelles"), and ECU 75 million against Tetrapak for violation of Article 86 ("Tetrapak").

Member States : The highest fines have been imposed in Germany (ECU 119.200.000; 30.740.000; 12.990.000), followed by France (ECU 22.840.000; 5.329.000), Italy (ECU 1.780.000; 1.017.000; 254.300), the Netherlands (settlement of ECU 1.024.000), Spain (ECU 902.555; 470.081; 457.545), Portugal (ECU 153.200), Greece (38.940), Belgium (ECU 2.537; 507,4) and Denmark (settlements of 1.333; 666,3). No fines ever have been imposed in Austria, Finland and Sweden.

Third Countries : The highest fines have been imposed in the United States (ECU 221.440.000), followed by Canada (ECU 1.925.000; 1.165.000; 931.900). Substantial prison terms have also been imposed in the United States, the longest of which was for 5 years. No fines ever have been imposed in Switzerland.

IV BODIES WITH AUTHORITY TO IMPOSE SANCTIONS

Imposition of sanctions

European Union : The Commission may impose fines and issue orders.

Member States : Sanctions may be imposed by administrative authorities in all Member States except Austria, where they are imposed by the Cartel Court. These authorities are independent agencies in Denmark, France (except regarding concentrations), Germany, Italy, Spain (except regarding concentrations) and Sweden; within government ministries, or appointed by them, in Belgium, Greece, and Portugal (except regarding concentrations); and the ministry itself in Ireland, Luxembourg, the Netherlands and the UK. In Finland, the Office of Free Competition, an independent authority, can propose the imposition of sanctions to the Cartel Court.

In Ireland, the main remedies for competition law violations are available on application to the courts. In addition, the Minister of Industry and Commerce may issue prohibition orders, but the Oireachtas has power to confirm or annul such orders. Similarly, in the UK, the President of the Board of trade may issue orders with the consent of Parliament.

In France, a government ministry has sole competence to issue orders and execute sanctions regarding concentrations, on non-binding advice of the Competition Council. Similarly, in Germany, the minister may prohibit a concentration. In Greece, the Ministry may impose fines for failure to notify a concentration or issue a prohibition order against a concentration

in certain sectors. In Portugal, decisions concerning concentrations are taken jointly by the Minister of Commerce and the Minister responsible for the affected sector. In Spain, the government may issue orders regarding concentrations.

In France, criminal sanctions are handled separately by the Procureur de la Republique. In the Netherlands, the Minister of Economic Affairs may declare that a dominant position is contrary to the "general interest," after which he may issue a formal prohibition order. He also may issue a declaration of non-binding effect against a restrictive practice. A Royal Decree may issue against a category of restrictive practices. Conduct in violation of all such declarations constitutes a criminal violation.

In the UK, the restrictive practices court may issue enforcement orders and impose sanctions. Courts may issue injunctions and award damages in private actions in Ireland.

Third Countries : Sanctions are imposed mainly through court order in Canada and the United States. Independent agencies may impose sanctions in Switzerland. In Mexico, sanctions may be imposed by the Federal Competition Commission, an administrative body of the Ministry of Trade and Industrial Promotion "technically and operationally autonomous" from it.

Appeals

European Union : The Court of First Instance is empowered to review the legality of the Commission's decisions. It has unlimited discretion to cancel, reduce, or increase fines or periodic penalty payments. The Court of Justice may review decisions of the Court of First Instance.

Member States : Courts are empowered directly to review some or all sanction decisions in 13 Member States (all except Denmark and Germany).

In Denmark and Germany, the decisions of the independent authority may be reviewed by the ministry or a body which it appoints, then ultimately by the courts.

In France, the Minister's decisions regarding concentrations are not reviewable. In the Netherlands, an administrative body has sole authority to review the minister's decisions. In Portugal, decisions regarding concentrations may be appealed only to the Supreme Administrative Tribunal.

In the UK, the decisions of the Board of Trade are not reviewable. However, courts may review enforcement orders and sanction decision of the Restrictive Practices Court.

Third Countries : Regarding third countries, judicial review is available for court-ordered sanctions in Canada, and the United States. Court review of some or all decisions by the administrative agencies is available in Mexico, and Switzerland.

TABLE I.
TYPE OF SANCTIONS ALLOWED FOR SUBSTANTIVE VIOLATIONS

U/Member States	RESTRICTIVE PRACTICES AND ABUSES OF DOMINANT POSITION				CONCENTRATIONS			
	Administrative		Criminal		Administrative		Criminal	
	Fines	Prohibition Orders	Fines	Imprisonment	Fines	Prohibition Orders	Fines	Imprisonment
European Union	yes ¹	yes	no	no	no ²	yes ³	no	no
Austria	yes ⁴	yes ⁵	yes ⁶	yes ⁶	no ⁷	yes ⁸	yes ⁶	no ⁶
Belgium	yes	yes	no	no	no ⁹	yes ¹⁰	no	no
Denmark	yes ¹¹	yes	no	no	no ¹²	no ¹²	no ¹²	no ¹²
Finland	yes ¹³	yes	no	no	no ¹⁴	no ¹⁴	no ¹⁴	no ¹⁴
France	yes	yes	yes ¹⁵	yes ¹⁵	yes	yes ¹⁶	no	no
Germany	yes	yes	no ¹⁷	no ¹⁷	no ¹⁸	yes ¹⁸	no ¹⁷	no ¹⁷
Greece	yes	yes	no ¹⁹	no ¹⁹	yes ²⁰	yes ²¹	no ¹⁹	no ¹⁹
Ireland	no ²²	yes ²³	no	no	no ²⁴	yes ²⁴	no	no
Italy	yes ²⁵	yes ²⁶	no	no	yes ^{25, 27}	yes	no	no
Luxembourg	no ²⁸	yes ²⁸	no	no	no ^{28, 29}	no ^{28, 29}	no ²⁹	no ²⁹
Netherlands	no	yes ³⁰	yes ³⁰	yes ³⁰	no ³¹	no ³¹	no ³¹	no ³¹
Portugal	yes	yes	no	no	no ³²	yes	no	no
Spain	yes	yes ³³	no ³⁴	no	yes	yes ³⁵	no	no
Sweden	yes	yes	no	no	yes	yes	no	no
United Kingdom	no ³⁶	yes ³⁷	no ³⁸	no ³⁸	no ³⁶	yes ³⁹	no ³⁷	no ³⁷
Third Country								
Canada	no	yes	yes ⁴⁰	yes	no	yes	no ⁴¹	no ⁴¹
Mexico	yes ⁴²	yes ⁴²	yes ⁴³	yes ⁴³	yes	yes ⁴⁴	no	no
Switzerland	yes	yes ⁴⁵	no	no	yes	yes ⁴⁵	no	no
USA	yes ⁴⁶	yes ⁴⁷	yes ⁴⁸	yes ⁴⁸	yes ⁴⁶	yes ⁴⁷	no	no

FOOTNOTES TO TABLE I

- In addition to fines for substantive violations of Articles 85 and 86, fines may be imposed for negligently or intentionally supplying incorrect or misleading information with respect to an application for a negative clearance, notification, or response to a request for information or other investigation. (Reg. 17, Art. 15)
- Fines may be imposed under the Merger Regulation for failing to satisfy notification requirements, supplying incorrect or misleading information or incomplete documents, or failing to satisfy time suspension requirements or conditions to a decision of compatibility. (Merger Reg., Art. 14) Periodic penalty payments may be imposed under the Merger Regulation for delays in supplying requested information or submitting to an ordered investigation, or for delays in complying with conditions to derogations from time suspension requirements, conditions to a decision of compatibility, or a divestiture order. (Merger Reg., Art. 15)

- 3 The Commission may order divestiture with respect to violative concentrations already consummated. (Merger Reg., Art. 8)
- 4 Austrian law provides for "absorption of enrichment" caused by an "unjustified performance of cartel" (Sec. 21) or abuse of a dominant position (Sec. 40). Fines may be imposed for infringement of the obligation to notify a vertical restraint. (Sec. 142/1)
- 5 Austrian law provides for the "prohibition of performance of a cartel" (Sec. 25) and the prohibition of vertical restraints (Sec. 30c). Divestiture may be ordered under certain circumstances (See Sec. 23)
Regarding abuse of a dominant position, the Cartel Court may instruct the violating undertaking to "stop abusing the dominant position." (Sec. 35)
- 6 Criminal fines or imprisonment may be imposed under Austrian law for "abuse of cartel." (Sec. 129) Criminal fines alone may be imposed for unjustified performance of cartel, vertical restraint, or merger (Sec. 130), or abuse of a dominant position. (Sec. 131)
- 7 Austrian law provides that a fine may be imposed on enterprises failing to meet merger notification requirements. (Sec. 42a/4, 142/1)
- 8 Austrian law provides that unless a release has been issued following notification, the consummation of mergers subject to notification is prohibited. (Sec. 42a/4)
- 9 Belgian law provides that fines may be imposed for failure to notify a concentration. (Art. 37)
- 10 Belgian law provides that the Council for Competition may order divestiture with respect to violative concentrations already consummated. (Art. 33, Sec. 4)
- 11 Danish law provides that in addition to fines for substantive violations, fines may be imposed for failing to notify, submit required information, or report to the Competition Council in accordance with statutory requirements, or failing to satisfy undertakings entered with the Competition Council. (KKL secs. 19, 20)
- 12 Denmark does not have a merger control statute.
- 13 Under Finnish law, an administrative fine may be imposed on an undertaking or association of undertakings which engage in vertical price fixing, bidding cartels, horizontal price fixing, market sharing and production restrictions, and abuse of a dominant position. (Secs. 4-8)
- 14 Finland does not have a merger control statute.
- 15 French competition law provides that criminal fines and imprisonment may be imposed against individuals whose acts were crucial to the conception, organization, and implementation of the prohibited practices. (Art. 17, Ordonnance du 1 Decembre 1986)
- 16 French law provides that "injonctions et prescriptions" of the Minister of Economy must be followed by the parties to a concentration. (Art. 42(3))
- 17 In Germany, failure to cooperate in an administrative investigation constitutes an administrative offense and may be fined pursuant to criminal proceedings. (GWB Sec. 39; OWIG)
- 18 German law provides that fines may be imposed for failure to notify a concentration. German law also provides that the FCO may order divestiture with respect to violative concentrations already consummated. (S. 24 GWB)

- 19 Greek law provides that criminal fines and imprisonment may be imposed for obstructing investigations of possible violations of the competition laws. (Sec. 29(2)).
- 20 Greek law provides that fines may be imposed for a violation of the substantive rules regarding concentrations (Art. 4(d)(1)) and for failure to notify a concentration. (Sec. 4a(5); Decision of Minister of commerce)
- 21 Greek law provides that the Minister may prohibit a concentration, and that a concentration which has been consummated in spite of a Minister's prohibition order may be divested or subject to other appropriate orders. (Art. 4(b))
- 22 Irish competition law does not provide for the imposition of fines by any administrative authority for restrictive practices or abuses of a dominant position. The 1991 Act essentially privatized the enforcement of Irish competition law, permitting an aggrieved party to file an action in the High Court for injunction, declaration, or damages. However, the Competition Bill of 1994 is currently under consideration in the legislature, and is expected to be enacted soon. This legislation introduces public enforcement of the Competition law, although it does not envisage the imposition of fines for substantive violations.
- 23 Irish competition law provides that in addition to the injunctive and declaratory relief discussed in note 14 supra, the Minister for Industry and Commerce (and under the Competition Bill of 1994, also the Competition Authority) may seek an injunction and declaration from a court for a breach of Section 4, which prohibits agreements in restraint of trade. Moreover, the Minister for Industry and Commerce can issue an order prohibiting the continuance of a dominant position and require, for example, the sale of assets, which must be confirmed by both houses of the Oireachtas. (Secs. 6, 14, Irish Competition Act of 1991)
- 24 Currently, if an enterprise fails to notify a proposed merger within the specified time limit, the "person in control" of the enterprise is liable for fines. (Sec. 16, Irish Competition Act, replacing Sec. 5, Mergers, Takeovers and Monopolies Act of 1978) The Competition Bill of 1994 would add that fines may be imposed on a "person in control" who knowingly and wilfully permits the provision of false information in a notification. It also would add Section 19a, providing that merger and takeover agreements are not covered by section 4 of the 1991 Act, which prohibits agreements in restraint of trade. Instead, only the 1978 Act would apply to mergers, under which mergers meeting certain turnover thresholds must be notified to the Ministry for Industry and Commerce. The Minister may refer the file to the Competition Authority for investigation, which may, in turn, propose to the Minister that he prohibit the merger either absolutely or on certain conditions. Any such order must be laid before each house of the Oireachtas, which may annul the order within 21 days. (Sec. 9, Mergers Takeovers and Monopolies Act of 1978)
- 25 Italian law provides that in addition to fines for substantive violations, individuals and enterprises possessing relevant documents or information and refusing, without justification, to produce them during an investigation, or producing false documents, may be subject to administrative pecuniary sanctions. (Art. 14, para. 5) In practice, however, such sanctions never have been applied against an individual.
- 26 Italian law provides that if an enterprise fails to satisfy an administrative order more than once, the Authority may order the suspension of the activity of the enterprise for up to 30 days. (Art. 15, Law N. 287, Oct. 10, 1990)
- 27 Italian law provides that the authority may impose fines in case of failure to respect an order prohibiting a concentration, or failure to notify. (Art. 18, Law N. 287, Oct. 10, 1990)
- 28 Luxembourg law provides that fines and imprisonment may be imposed against individuals who refuse to cease conduct which has been enjoined. (Art. 8)

- 29 Luxembourg does not have a merger control statute. However, concentrations which constitute restrictive practices or abuses of a dominant position are prohibited. (Art. 7)
- 30 Netherlands competition law, which is based on abuse control, prohibits restrictive practices which are considered contrary to the general interest, either individually through Decision of the Minister of Economic Affairs (WEM, Arts. 19, 22), or by category of practice, declared by Royal Decree (WEM, Arts. 10, 15). When a dominant position is deemed to be contrary to the general interest, the Minister of Economic Affairs may decide either to prohibit or oblige certain conduct (WEM, Art. 24). Violation of such decisions and Royal Decrees is subject to criminal sanctions.
- 31 The Netherlands does not have a merger control statute.
- 32 Portuguese law provides that fines may be imposed for supplying false information in a notification, or for failure to notify a notifiable concentration. (Art. 37(3)).
- 33 Spanish law provides that the Tribunal for the Defense of Competition may impose prohibition orders and coercive fines to oblige compliance with such orders. (Art. 11)
- 34 The Spanish Penal Code establishes criminal fines and imprisonment for acts which may violate the competition laws. In practice, however, this provision has been applied rarely regarding such acts.
- 35 Spanish law provides that divestiture may be ordered with respect to a violative concentration already consummated. (Art. 17)
- 36 British law does not provide fines for violations of the competition laws. However, breach of a prohibition order of the Restrictive Practices Court (regarding restrictive practices) or the High Court (regarding abuses of a dominant position or concentrations) constitutes contempt and is punishable by the Court by fines, imprisonment or sequestration of assets.
- 37 British law provides that certain agreements must be registered with the Director General of Fair Trading, and failure to do so will render any such restriction void. (Sec. 35, Restrictive Trade Practices Act 1976) Moreover, the Restrictive Practices Court may issue an order prohibiting an attempt to enforce any restriction which it finds to be contrary to the public interest, whether or not it has been registered.
- 38 British law provides that obstruction of an investigation by the Director General of Fair Trading, the Monopolies and Mergers Commission, and/or the Secretary of State (President of Board of Trade) is a criminal violation punishable by fines and/or imprisonment. (Secs. 36 and 38, Restrictive Trade Practices Act 1976; Secs. 46(2), 85 and 93B, Fair Trading Act 1973; Secs. 3, 7, Competition Act 1980)
- 39 British law provides that in addition to prohibiting the consummation of a merger, the President of the Board of Trade may order divestiture or behavioral remedies with respect to violative concentrations already consummated. (Sec. 56, Sched. 8, 14, Fair Trade Act of 1973; Sec. 10, Competition Act 1980)
- 40 In addition to fines, Canadian law provides that a person who has been convicted of violating the Act may be required to make restitution of damages to injured parties. (Sec. 725, Criminal Code)
- 41 Canadian law provides that criminal sanctions may be imposed regarding concentrations only where there is a failure to notify, to supply required information, or when the merger is consummated prior to the expiration of time periods specified in the act. (Sec. 65(2), 120, 123)

- 42 Mexican law provides that "relative monopolistic practices," (defined as acts, agreements or combinations whose effect could be to exclude or hinder market access, or establish exclusive advantages in favour of one or several persons, including vertical divisions of markets, resale price maintenance, tied sales, exclusive dealing, allocation of customers, refusals to deal, and vertical boycotts) require market analysis to assess their legality, and are subject to administrative sanctions, including prohibition orders and fines. (Ch. 2, Art. 10)
- 43 Mexican law provides that "absolute monopolistic practices," (defined as contracts, agreements, or combinations among competitors whose effect could be to exclude or hinder market access, or establish exclusive advantages in favour of one or several persons, including price fixing agreements, cartel agreements, horizontal market divisions, and bid rigging) are deemed to be per se illegal, and are subject to prohibition orders, as well as criminal fines and imprisonment. (Ch. 2, Art. 9) Criminal sanctions also may be imposed for making false statements or providing false information. (Ch. 6, Art. 35)
- 44 Mexican law provides that partial or total divestiture may be imposed with respect to violative concentrations already consummated. (Ch. 3, Art. 19)
- 45 Swiss law provides only that certain behaviours may be required by the Ministry, and allows for the imposition of fines for the failure to satisfy investigative demands or to comply with orders and decisions. (Arts. 30, 32, 37, 39-40 KG).
- 46 US law provides that the Department of Justice may seek fines through court order for violations of the antitrust laws, but may not impose fines itself. (15 U.S.C. 1, 2, 4) The government can maintain an action for treble damages plus costs if the US is injured by an Antitrust violation (15 USC 5a); state attorneys general may bring such actions when the state is injured (15 USC 15c); and private parties may bring such actions when they are injured (15 USC 15). Fines may be imposed for failure to comply with premerger notification requirements under the Hart-Scott-Rodino Act. (16 CFR 803.30 (1994)) Finally, fines may be imposed for violations of FTC cease and desist orders. (15 USC 15c)
- 47 US law provides that the Department of Justice and Federal Trade Commission may seek injunctive relief (including temporary restraining orders, preliminary injunctions and permanent injunctions which may require divestiture) from a federal district court for Sherman Act, Clayton Act and FTC Act violations. (15 U.S.C. 4, 45, 53(b)) Such order may issue to prohibit consummation of a concentration which would violate Section 7 of the Clayton Act. In addition, the FTC may issue a cease and desist order, subject to judicial review. (15 U.S.C. 21b, 45b) Injunctive relief may be imposed for failure to comply with Hart-Scott-Rodino premerger notification requirements. (16 CFR 803.30 (1994)) Moreover, the government and defendants may enter consent decrees, which are final settlements for relief before any testimony has been taken in a case. The Antitrust Proceedings and Penalties Act requires a court to determine whether such decree will be in the "public interest" before it is entered. (PL 93-528) Finally, private parties may seek injunctions through court order. (15 U.S.C. 26)
- 48 US law provides that only the Department of Justice may seek criminal penalties, including fines and imprisonment, for Sherman Act violations. (15 U.S.C. 1, 2, 4) In practice, the Department prosecutes only per se violations, usually involving price fixing, customer allocations, bid rigging, or other cartel activities.

**TABLE II.
ENTITIES WHICH OR INDIVIDUALS WHO CAN BE SANCTIONED FOR
SUBSTANTIVE VIOLATIONS**

EU/Member States	ENTERPRISE			INDIVIDUAL			
	Administrative		Criminal	Administrative		Criminal	
	Fines	Prohibition orders	Fines	Fines	Prohibition Orders	Fines	Imprisonment
<i>European Union</i>	yes	yes	no	no ¹	no	no	no
<i>Austria</i>	yes	yes	yes ²	yes ³	no	yes ⁴	yes ⁴
<i>Belgium</i>	yes ⁵	yes	no	no ⁵	no	no	no
<i>Denmark</i>	yes	yes	no	yes ⁶	no	no	no
<i>Finland</i>	yes	yes	no	no	no	no	no
<i>France</i>	yes	yes	no	no ⁷	no	yes ⁸	yes ⁸
<i>Germany</i>	yes	yes	no ⁹	yes ¹⁰	no	no ⁹	no
<i>Greece</i>	yes	yes	no	yes ¹¹	no	no ¹²	no ¹²
<i>Ireland</i>	no	yes	no	no ¹³	no ¹⁴	no	no
<i>Italy</i>	yes	yes	no	no ¹⁵	no	no	no
<i>Luxembourg</i>	no	yes	no	no ¹⁶	no	no ¹⁶	no ¹⁶
<i>Netherlands</i>	no	yes	yes ¹⁷	no	yes	yes ¹⁷	yes ¹⁷
<i>Portugal</i>	yes	yes	no	no	no	no	no
<i>Spain</i>	yes	yes	no	yes ¹⁸	no	no ¹⁹	no ¹⁹
<i>Sweden</i>	yes	yes	no	no	no	no	no
<i>United Kingdom</i>	no ²⁰	yes	no	no ²¹	yes	no ²²	no ²²
Third Country							
<i>Canada</i>	no	yes	yes ²³	no	yes	yes ²⁴	yes ²⁴
<i>Mexico</i>	yes	yes	yes	yes ²⁵	no	yes	yes
<i>Switzerland</i>	no	yes	no	no	yes	no	no
<i>USA</i>	yes ²⁶	yes ²⁷	yes ²⁸	yes ²⁶	yes ²⁷	yes ²⁸	yes ²⁸

FOOTNOTES TO TABLE II

- Under the Merger Regulation, fines may be imposed against "persons already controlling at least one undertaking" who acquire control of another undertaking, and who intentionally or negligently fail to notify a concentration, supply incorrect or misleading information or incomplete documents, fail to satisfy time suspension requirements or conditions to a decision of compatibility of a concentration. (Merger Reg., Art. 3(1), 14)
- Under Austrian law, criminal courts can impose fines on enterprises if the elements of an offense by an "entrepreneur" are satisfied. (Sec. 137)
- Under Austrian law, fines may be imposed on the "entrepreneur or the association of entrepreneurs" by the Cartel Court. (Secs. 21, 40, 142)

4. In Austria, imprisonment and/or fines may be imposed against "members of a cartel, organ, or tacit agent of a cartel or cartel member." (Sec. 129) All "entrepreneurs" of a cartel are to be held liable for fines jointly with the convicted person. (Sec. 136)
5. Belgian law provides that fines may be imposed on the individual who or enterprise which fails to provide information or otherwise obstructs an investigation. (Art. 37) In addition, the enterprise may be fined for the substantive violation. (Art. 36)
6. Danish law provides that fines may be imposed on individuals acting on behalf of the company if they have infringed the rules intentionally or by gross negligence. (KKL Sec. 20(1))
7. French law provides that fines may be imposed against the individual in cases where the individual is an enterprise. (Art. 13, Ordonnance du 1 Decembre 1986)
8. French competition law provides that criminal penalties may be imposed against individuals whose acts were crucial to the conception, organization, and implementation of the prohibited practices. (Art. 17, Ordonnance du 1 Decembre 1986)
9. In Germany, criminal penalties may be imposed for failure to cooperate in an administrative investigation. (GWB Sec. 39; OWIG)
10. German law provides that individuals acting on behalf of enterprises may be fined. (Sec. 38 GWB)
11. Greek law provides that individuals acting in their personal capacity or as representatives of legal persons can be fined (Sec. 29, para. 1) and may be held liable jointly with the enterprise for the payment of fines. (Sec. 30, para. 1)
12. Greek law provides that criminal proceedings may be initiated, and criminal penalties imposed, against entrepreneurs in the case of sole proprietorships, against partners in the case of partnerships, against administrators in the case of limited liability companies and cooperatives, and against members of the board of directors in the case of corporations for obstructing investigations of antitrust violations. (Secs. 29, 30) Penalties include a mandatory prison term and a fine. (Sec. 29, para. 2)
13. Irish law provides that if an enterprise fails to notify a proposed merger within the specified time limit, the "person in control" of the enterprise is liable for fines. (Sec. 16, 1991 Irish Competition Act, replacing Sec. 5, Mergers, Takeovers, and Monopolies Act of 1978) The Competition Bill of 1994 adds that fines may be imposed on a "person in control" who knowingly and wilfully permits the provision of false information. Fines and/or imprisonment may be imposed against individuals for obstruction of investigations. (Sec. 21(3), 1991 Irish Competition Act; Sec. 7(4), Schedule of 1991 Competition Act)
14. Prohibition orders relate to "undertakings," which encompass individuals "engaged for gain in the production, supply, or distribution of goods or the provision of a service." (Art. 3(1), 1991 Irish Competition Act)
15. Italian law provides that individuals and enterprises possessing relevant documents or information and refusing, without justification, to produce them during an investigation, or producing false documents, shall be subject to administrative pecuniary sanctions. (Art. 14, para. 5) In practice, however, such sanctions never have been applied against the individual.
16. Luxembourg law provides that fines and imprisonment may be imposed against individuals who refuse to cease conduct which has been enjoined. (Art. 8)

17. Violation of a Royal Decree prohibiting or obliging certain conduct after the Minister of Economic Affairs has found a dominant position to be contrary to the general interest is subject to criminal penalties. (WEM, Arts. 19, 22, 24)
18. Spanish law provides that fines may be imposed against natural persons who are legal representatives of the enterprise or who were members of the administrative bodies that participated in the agreement or decision. (Art. 10)
19. The Spanish Penal Code establishes criminal fines and imprisonment against the individual for acts which may constitute violations of the competition laws. In practice, however, this provision has been applied rarely.
20. British law does not provide fines for violations of the competition laws. However, breach of a prohibition order of the Restrictive Practices Court (regarding restrictive practices) or the High Court (regarding abuses of a dominant position or concentrations) constitutes contempt and is punishable by fines, imprisonment or sequestration of assets.
21. British common law provides that directors of an enterprise may be fined or imprisoned by the court for contempt for failing to follow an order of the Restrictive Practices Court or the High Court issued against the enterprise.
22. British law provides that directors of an enterprise may be punished by fines and/or imprisonment for obstructing an investigation by the Director General of Fair Trading, the Monopolies and Mergers Commission, and/or the Secretary of State (President of the Board of Trade). (Secs. 46(2), 85 and 93B, Fair Trading Act 1973; Sec. 38, Restrictive Trade Practices Act 1976; Secs. 3, 7, Competition Act 1980)
23. Canadian law provides that corporations guilty of entering agreements in restraint of trade, price fixing, or discriminatory pricing are subject to criminal fines. (Secs. 45, 61(9), and para. 50(1)(a))
24. Canadian law provides that individuals guilty of entering agreements in restraint of trade, price fixing, or discriminatory pricing are subject to imprisonment and criminal fines. (Secs. 45, 61(9), and para. 50(1)(a)).
25. Mexican law provides that individuals who have participated "directly or indirectly in monopolistic practices or prohibited [concentrations] on behalf or in representation and by order of corporations" may be fined for the substantive violations and for providing false information. (Ch. 6, Art. 35)
26. US law provides that the Department of Justice may seek fines against individuals and enterprises through court order for violations of the antitrust laws, but may not impose fines itself. (15 U.S.C. 1, 2, 4) The government can maintain an action for treble damages plus costs against individuals and enterprises if the US is injured by an antitrust violation (15 USC 5a); state attorneys general may bring such actions when the state is injured (15 USC 15c); and private parties may bring such actions when they are injured (15 USC 15). Fines may be imposed for failure to comply with premerger notification requirements under the Hart-Scott-Rodino Act. (16 CFR 803.30(1994)) Finally, violations of an FTC cease and desist order are punishable against individuals or enterprises by penalties. (15 USC 15c)
27. US law provides that the Department of Justice and Federal Trade Commission may seek injunctive relief (including temporary restraining orders, preliminary injunctions and permanent injunctions, which may require divestiture) against individuals and enterprises from a federal district court for Sherman Act, Clayton Act and FTC Act violations. (15 U.S.C. 4, 45, 53(b)) Such an order may issue to prohibit consummation of a concentration which would violate Section 7 of the Clayton Act. In addition, the FTC may issue a cease and desist order against

the individual or the enterprise, subject to judicial review. (15 U.S.C. 45 and [add Sec. 11 of Clayton Act]) Injunctive relief may be imposed for failure to comply with Hart-Scott-Rodino premerger notification requirements (16 CFR 803.30) (1994)) Moreover, the government and defendants, either individuals or enterprises, may enter consent decrees, which are final settlements for relief before any testimony has been taken in a case. The Antitrust Proceedings and Penalties Act requires a court to determine whether such decree will be in the "public interest" before it is entered. (PL 93-528) Finally, private parties may seek injunctions against individuals or enterprises through court order. (15 U.S.C. 26)

28. US law provides that only the Department of Justice may seek criminal penalties, including fines against the enterprise, and fines and imprisonment against the individual, for Sherman Act violations. (15 U.S.C. 1, 2, 4) In practice, the Department prosecutes only per se violations, usually involving price fixing, customer allocations, bid rigging or other cartel activity

TABLE III.
SEVERITY OF SANCTIONS
 (ECU conversions by rates of OJ No. C308/1, 4.11.94)

EU/Member State/Third Country	STATUTORY LIMITS ON SANCTIONS	MOST SEVER SANCTIONS IMPOSED
<i>European Union</i>	1 ECU 1.000-1 000.000, or sum in excess of that up to 10% of turnover in preceding business year, for violation of Art. 85 or 86. In setting fine, regard shall be had to gravity and duration of infringement. (Reg. 17, Art. 15(2)) 2. ECU 100-5.000 for intentionally or negligently supplying incorrect or misleading information with respect to an application for a negative clearance, notification, response to a request for information, or other investigation. (Reg. 17, Art. 15(1)) 3 ECU 1.000-50.000 for intentionally or negligently failing to notify a concentration, or supplying incorrect or misleading information or incomplete documents. (Merger Reg., Art. 14) 4. Up to 10% turnover for failing to satisfy time suspension requirements or conditions to a decision of compatibility of a concentration. In setting fine, regard shall be had to nature and gravity of infringement. (Merger Reg., Art. 14) 5. Periodic penalty payments of up to ECU 25.000 per day of delay in supplying information requested or in submitting to ordered investigation (Merger Reg., Art. 15(1)) 6. Periodic penalty payments of up to 100.000 per day of delay in complying with conditions to derogations from time suspension requirements of concentration or conditions to a decision of compatibility, or divestiture. (Merger Reg., Art. 15(2))	1. On 30 November 1994, the Commission imposed a fine of ECU 248 million against the European Cement Association, 8 national cement associations and 33 European cement producers for infringements of Article 85(1). (Press Release IP/94/1108)("Cement") 2. In July 1994, the Commission imposed a fine of ECU 132.15 million against 19 companies in the cartonboard industry for violations of Art. 85(1). (OJ No. L243/1, 19.9.94)("Cartonboard") 3. In February 1994, the Commission imposed a fine of ECU 117 million against 16 companies in the steel industry for violations of Art. 65(1). (OJ No. L116/1, 6.5.94)("Poutrelles") 4. In July 1991, the Commission imposed a fine of ECU 75 million against Tetrapak for violation of Art. 86. (OJ No. L72/1, 18.3.92)("Tetrapak")
<i>Austria</i>	1. To disgorge the benefits of the infringement, the Cartel Court imposes payment to the government of an amount equal to the unjust enrichment derived from the infringement. (Sec. 21) 2. Fines of up to ATS 500.000 (ECU 3.706) may be imposed for failure to satisfy notification requirements. To determine the amount, the court considers the seriousness of the infringement, the degree of culpability, and economic efficiency. (Sec. 143) 3. Fines of up to ATS 10 million (ECU 741.300) may be imposed by the criminal courts for criminal violations. (Sec. 137)	To date, neither fines nor a prison term have been imposed.
<i>Belgium</i>	1. 10% of turnover; additional daily payment of up to BF 250.000 (ECU 6.343) for failure to comply with decision. (Art. 36) 2. Fines of BF 20.000-1 million (ECU 507,5-25.370) can be imposed for obstructing an investigation. (Art. 37)	Only 2 fines have been imposed thus far: 1. In July 1993, a fine of BF 20.000 (ECU 507,4) was imposed for failure to make a timely notification. 2. In September 1994, a fine of BF 100.000 (ECU 2.537) was imposed for the same reason.
<i>Denmark</i>	Competition law contains no limits.	Fines rarely imposed. In 1991, a settlement was entered in which the company agreed to pay DKK 10.000 (ECU 1.333) for a refusal to supply. Fines generally would not exceed DKK 5.000 (ECU 666,3).

<p><i>Finland</i></p>	<p>Fines of FIM 5.000-4 million (ECU 851-680.500) can be imposed for substantive violations. The amount is based on the nature of the restriction and its duration. (Sec. 8, para. 2). This maximum may be exceeded where the restriction on competition and circumstances warrant, but not more than 10% of the total turnover of each of the participating undertakings or associations of undertakings for the year preceding the violation.</p>	<p>To date, no fines have been imposed. The Office of Free Competition has proposed fines in several cases, but the Competition Council, which exercises jurisdiction in competition matters, has not yet decided whether to impose these fines.</p>
<p><i>France</i></p>	<p>1. Civil fines are limited to 5% of turnover. (Art. 13) 2. Criminal fines of FF 5.000-500.000 (ECU 761,3 - 76.130) or a prison term of 6 months - 4 years may be imposed against individuals convicted of personal involvement in the proscribed acts. (Art. 17, Ordonnance du 1 Decembre 1986) 3. For obstruction of investigation, up to FF 50.000 (ECU 7.614) or imprisonment of up to six months.</p>	<p>1. In 1989, a fine of FF 150 million (ECU 22.840.000) was imposed against 72 enterprises for violations of Art. 7 of the Ordonnance du 1 Decembre 1986. (Decision du Conseil de la Concurrence du 25 Octobre 1989) 2. In 1994, a fine of FF 35 million (ECU 5.329.000) was imposed against CARAT for violation of Arts. 7 and 8 of the Ordonnance du 1 Decembre 1986. (Decision D SJ 59 du Conseil de la Concurrence du 15 Decembre 1993)</p>
<p><i>Germany</i></p>	<p>1. For intentional violations, up to DM 1 million (ECU 521.800); beyond that, up to 3 times additional receipts from the violation for intentional violations (Sec. 38(4) GWR). 2. For violations involving negligence, up to DM 500.000 (ECU 260.900)(Sec. 1 and 2, OWIG) and 1.5 times additional receipts from the violation (Sec. 17(2)OWIG). 3. For failure to cooperate in an administrative investigation, criminal fines of up to DM 50.000 (ECU 26.100) for each wrongdoing (GWB Sec. 39; STPO; OWIG), or penalty payments of up to DM 2.000 (ECU 1.044)(VwVG Sec. 11). Criminal penalties of up to 6 weeks imprisonment or monetary penalty for failure to cooperate in a criminal proceeding. (STPO)</p>	<p>FCO has repeatedly relied on Sec. 17(2) OWIG. 1. In 1988, a fine of DM 228.5 million (ECU 119.200.000) was imposed against the German Cement Industry due to long and severe breach of competition rules. DM 111 million (ECU 57.930.000) is the highest fine imposed against an individual company; and DM 600.000 (ECU 313.100) is the highest fine against an individual, both in same cement case. 2. In 1988, a fine of DM 58.9 million (ECU 30.740.000) was imposed against 70 enterprises and 145 individuals in the heating and air conditioning industry. 3. In 1982, the FCO imposed fines of DM 56.5 million (ECU 29.480.000) against 83 enterprises and their responsible officers. Fines were subsequently reduced on appeal to DM 24.9 million (ECU 12.99 million) for two reasons: worsening economic situation, and recalculation of undue profits.</p>
<p><i>Greece</i></p>	<p>1. Fines of DRG 60 million - 100 million (ECU 203.100 - 338.600) for strengthening or abusing a dominant position; for serious infringements, 10% of gross income of violator during the year infringement committed, or preceding year. (Sec. 9, para. 2) 2. For obstruction of an investigation, at least 3 months imprisonment and a fine of at least DRG 1 million (ECU 3.386) for the first offense; twice that amount for repetition of the offense. (Sec. 29, paras. 1&2) 3. Up to 3% of turnover for failure to notify a concentration. (Sec. 4a, para. 5) 4. For consummation of a prohibited concentration, fine of up to 15% of total turnover of the undertakings participating in the concentration. (Decision of the Minister of commerce, Art. 4(d), Sec. 1)</p>	<p>The Competition Committee advised fines as follows against the Greek bottling company "3E": 1) DRG 20 million (ECU 67.730) for abuse of dominant position in price and discount policy; 2) DRG 2 million (ECU 6.773) for abuse of dominant position through price discrimination; 3) DRG 500.000 (ECU 1.693) for failure to notify acquisition of competitors' shares; 4) DRG 20 million (ECU 67.730) for abuse of dominant position through the acquisition. The Minister accepted the first three recommendations, but lowered the proposed fines by a total of DRG 11 million (ECU 37.250). Thus, the total fine was DRG 11.5 million (ECU 38.940). (Competition Policy in OECD Countries, 1990-1991)</p>
<p><i>Ireland</i></p>	<p>1. No fines or imprisonment provided in 1991 Act for substantive violations. 2. For obstruction of an investigation, up to IrL 1.000 (ECU 1.265) and/or up to 12 months imprisonment. (1991 Act, Sec. 21(3))</p>	

<p><i>Italy</i></p>	<p>1. For a failure to follow orders designed to restore competition following consummation of a prohibited merger, fines of 1 - 10% of turnover during accounting year preceding service of warning, referring to products which are object of the undertaking or abuse of dominant position, depending on the gravity of the violation. (Arts. 15, 19) 2. For failure to comply with a prohibition order, fines of up to 10% of turnover, and if fine had already been applied, then at least two times fine already applied up to 10% of turnover. In the case of repeated failures to comply, the authority may suspend operations for up to 30 days. (Art. 15) 3. For failure to notify a concentration, up to 1% of the preceding year's turnover, in addition to other fines discussed above. (Art. 19) 4. For refusal or failure to supply information requested, up to Lire 50 million (ECU 25.430); for supplying incorrect or misleading information, up to Lire 100 million (ECU 50.860).</p>	<p>1. In 1992, fines of Lire 3.5 billion (ECU 1.780.000) and 2 billion (ECU 1.017.000) were imposed for restrictive agreements in the Cementi-Sacci case. (Relazione Annuale dell'Autorita Garante della Concorrenza e del Mercato, pp. 32-34, 1993). 2. On July 10, 1991, a fine of Lire 500 million (ECU 254.300) was imposed for failure to notify a concentration. (Id., p. 48, 1992).</p>
<p><i>Luxembourg</i></p>	<p>Prison term of 8 days - 1 year and fine of LF 10.000 - 1 million (ECU 253,7 - 253.700) for failure to obey an order to cease violative conduct. (Art. 8)</p>	
<p><i>Netherlands</i></p>	<p>A maximum fine of Fl 50.000 (ECU 23.280) and/or a maximum prison term of 6 months may be imposed against individuals. A maximum fine of Fl. 1.000.000 (ECU 460.000) may be imposed against an enterprise. (Art. 6 io.; Art. 23, Criminal Code) In addition, a supplementary pecuniary sanction may be imposed to disgorge the benefit of the violation.</p>	<p>To date, no individuals have been imprisoned under this provision. Most cases settled. Maximum pecuniary sanction imposed was Fl 2,2 million (ECU 1.024.000).</p>
<p><i>Portugal</i></p>	<p>1. Escudos 100.000 - 200 million (ECU 510 - 1.021.000) for substantive violations regarding restrictive practices and abuses of a dominant position. (Art. 37(2)) 2. Escudos 100.000 - 100 million (ECU 510 - 510.500) for failure to comply with order of Competition Council concerning restrictive business practices or abuses of a dominant position or decision of Ministries concerning concentration, failure to notify a concentration, supplying false information in a notification or in reply to a request for information concerning a concentration. (Art. 37(3)) 3. Escudos 100.000 - 10 million (ECU 510,5 - 51.050) for obstructing an investigation or giving false information regarding restrictive business practices or abuses of a dominant position (Art. 37(4)) 5. Escudos 50.000 - 5 million (ECU 255,3 - 25.530) for false declarations by third parties in an investigation or giving false information regarding restrictive business practices or abuses of a dominant position. (Art. 37(5))</p>	<p>1. From the time Law No. 422/83 was enacted until the end of 1989, the Competition Council has examined 32 cases and has imposed fines in 10 of these, ranging from Escudos 50.000 - 5.000.000 (ECU 255,3 - 25.530). 2. In 1990, fines of Escudos 10.000.000 (ECU 51.050) were imposed against each of three gas distributors, totaling Escudos 30.000.000 (ECU 153.200). (Atliquido, Case No. 4/90)</p>

<p><i>Spain</i></p>	<p>1. Up to Pts 150 million (ECU 939 500) This amount may be increased to up to 10% of turnover for the fiscal year preceding the court's decision 2. Pts 10.000 - 150.000 (ECU 62,63 - 939,5) in coercive fines, which may be repeated periodically. (Art. 11) 3 For concentrations, up to 10% of turnover (Art 18) 4 Pts 50 000-1 million (ECU 313-6 263) for failure to cooperate in an investigation or to supply requested information; up to Pts. 150 000 per day for obstruction of the SDC investigation proceedings (Art 32)</p>	<p>1 On July 8, 1992, a fine of ECU 902.555 was imposed against Envasadores Aceites (Case 294/91). 2. On July 14, 1992, a fine of ECU 470.081 was imposed against servicios funerarios (case 308/91). 3. On March 6, 1992, a fine of ECU 457 545 was imposed against Detergente en Polvo (case 306/91) All three cases involved violations of Art. 1, related to concerted practices</p>
<p><i>Sweden</i></p>	<p>10% of turnover However, in practice, the fine is based on an evaluation of damages and profits from the violation.</p>	<p>Only one case decided thus far, against Swedish electric company, which is on appeal.</p>
<p><i>United Kingdom</i></p>	<p>1 For obstruction of investigation in violation of Fair Trading Act of 1973, Restrictive Trade Practices Act 1976 and Competition Act 1980 or for contempt of court, maximum penalty is 2 years imprisonment and unlimited fines in Crown Court, and 6 months imprisonment and/or L 5 000 fine (ECU 6 408) in magistrate's court 2 Failure to comply with a request for information is punishable by 3 months imprisonment and/or L1.000 fine (ECU 1 282) (Sec 36, RTPA)</p>	<p>1 Fines have never been imposed for obstruction of an investigation. The Restrictive Practices Court has warned that company directors could be imprisoned for contempt, but did not do so, in the British Pipe Association case. (J 17-12-80, Ap. 17 11 82, reported [1983] 1 All ER 203) 2 In a case involving the ready mix concrete industry, the Restrictive Practices Court fined 4 companies a total of L81 000 (ECU 103 823) for contempt for breaching undertakings by operating a cartel, and fined 2 employees a total of L2 200 (ECU 2 820) for aiding and abetting the breach. The case is on appeal in the House of Lords, but it is clear that if the liability of the company stands, so does that of the employees (1990 Annual Report of the Director General of Fair Trading, pp 110-111; Whish: Competition Law, 3rd Ed , pp. 168-169) 3. The Restrictive Practices Court held that to be held liable for aiding and abetting, employees must have been actually involved Mere knowledge of breach is not enough. (Director General of Fair Trading v. Buckland, [1990]IAUR)</p>
<p><i>Canada</i></p>	<p>1. Unlimited for some offenses, limits for others For agreements in restraint of trade, a maximum fine of C\$ 10 million (ECU 5 824 000) and/or a maximum prison term of five years. (Sec 45) For price fixing, an unlimited fine and/or a maximum prison term of five years (Sec. 61(9)) For discriminatory pricing, an unlimited fine and/or a maximum prison term of 2 years. (Sec 50(1)) 2. Criminal fines of up to C\$ 5.000 (ECU 2 910) and imprisonment of up to two years may be imposed against "any person" for obstruction of an investigation; criminal fines of up to C\$ 50 000 (ECU 29.100) or imprisonment of up to five years may be imposed on a person who destroys or alters any document required to be produced (Sec 65(3)).</p>	<p>1. In 1990, civil fines totaling 3 305.000 (ECU 1 925.000) were imposed against four firms in a bid-rigging case. Of this amount, C\$ 1 million (ECU 582.400) was imposed against one firm, and this was the largest fine ever imposed against a single firm. 2 In 1988, civil fines totaling C\$ 1.6 million (ECU 931 900) were imposed against four companies in a bid-rigging case. 3 In 1979, criminal fines ranging from C\$ 450 000 - C\$2 million (ECU 262.100 - 1 165.000) were imposed in the Dredging case against 8 firms for bid-rigging and fraud. Under the Criminal Code, five executives were sentenced from 2-5 years imprisonment in that case. However, no business executive has ever been imprisoned for violating the Competition Act or its predecessor over the past century</p>

<p><i>lexico</i></p>	<p>1 Up to 375 thousand times the minimum general wage for an absolute monopolistic practice. (Art. 35, para. III) 2. Up to 225 thousand times the minimum general wage for a relative monopolistic practice; up to 100.000 time the minimum general wage for other acts that impede competition (Art. 35, para. V) 3 Up to 225 thousand times the minimum general wage for taking part in a prohibited concentration; and up to 100 thousand times the minimum general wage for failure to notify a concentration (Art. 35, para. VI) 4. Up to 7.500 times the minimum general wage against individuals who engage directly or indirectly in monopolistic practices or prohibited concentrations; twice that amount for repeated offenses (Art. 35, para. VII)</p>	
<p><i>Switzerland</i></p>	<p>1 For violation of recommendations and decisions of the Ministry or of the Cartel Commission, SFr 100.000 (ECU 62.380). (Art. 39) 2. For failure to supply information, documents, or breach of secrecy requirement, SFr 20.000 (ECU 12.480)(Sec. 40) Under the new draft code, administrative fines up to SFr 100 000 (ECU 62.380) could be imposed for failure to comply with the requirement to provide information. (Draft Art. 52)</p>	<p>No fines ever imposed Only one order, concerning a cartel in the banking industry, has been issued.</p>

<p>USA</p>	<p>Assessment of fines based on type of violator, time of violation, and statute or guidelines under which fine computed</p> <p>1 Under the Comprehensive Crime Control Act of 1984 (18 USC 3571)(which covers antitrust violations) and the Sherman Act (15 USC 1-3), corporate defendants may be fined up to US\$10 million (ECU 7.909 000), other defendants up to US\$ 350.000 (ECU 276.800) plus, for individuals, up to three years imprisonment. In the alternative, up to twice the gross pecuniary gain or loss caused by the offense (18 USC 3571(d)(1988) Supp 1993))</p> <p>2 The Sentencing Guidelines of the US Sentencing Commission, which govern horizontal bid rigging, price fixing, and market allocation violations, and non-compliance with FTC subpoenas and requirements, set mandatory actual minimum fines of US\$ 20 000 (ECU 15 820) for individuals, maximum fines of a percentage of the volume of commerce attributable to the violation (1-5% turnover for individuals, 20% for organizations), and imprisonment of 8-33 months, based on the amount of commerce attributable to the violation and specific aggravating and mitigating factors (Sec 2 R1 1, Ch 8)</p> <p>3 Failure to comply with a final FTC order is punishable by maximum penalties of US\$ 10 000 (ECU 7 908) per day under the FTC Act (15 USC 211), and US\$ 5 000 per day (ECU 3 954) under the Clayton Act (15 USC 45)</p> <p>4 Private plaintiffs may obtain treble damages plus interest and attorneys fees (15 USC 15)</p> <p>5 The US government and state governments can maintain an action for treble damages plus costs if they are injured by an antitrust violation (15 USC 15a, 15c)</p> <p>6 Failure to satisfy the Hart-Scott-Rodino Act premerger notification requirements is punishable by fines of up to US\$ 10 000 (ECU 7 908) for each day the violation continues</p>	<p>In 1992, new criminal cases were filed at the rate of 80 per year. Between 1989 and 1992, 260 corporations and 197 individuals were convicted of antitrust violations and related crimes, resulting in more than US\$ 88 3 million (ECU 69 830 000) in corporate fines or US\$ 340 000 (ECU 268.900) per convicted corporate defendant. Individual jail sentences averaged more than 3 months per convicted defendant. Record fine of US\$ 280 million (ECU 221 400 000) asset forfeiture in case against Salomon Bros. for price fixing (Speech of Charles A. James, acting Assis Atty Gen, Antitrust Div, Dept of Justice, Nov 6, 1992)</p> <p>At least one firm has been fined the maximum of US\$ 10 million (ECU 7 908 000) in 3 separate actions for electrical construction bid-rigging. The longest prison term imposed on an individual was 5 years under 2 indictments involving 8 violations of the law. Imprisonment is ordered in a large proportion of government criminal antitrust cases but often with suspended sentences</p>
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**TABLE IV.
BODIES WITH AUTHORITY TO IMPOSE SANCTIONS**

Member State/Third Country	ADMINISTRATIVE AUTHORITY	COURT
European Union	The Commission may impose fines and issue orders. (Reg. 17, Arts. 3, 9, 15, 16; Merger Reg., Arts. 6, 7, 8, 14, 15)	The Court of First Instance has unlimited jurisdiction to review decisions of the Commission. With respect to decisions imposing a fine or periodic penalty payment, it may cancel, reduce or increase the same. The Court of Justice may review decisions of the Court of First Instance. (Reg. 17, Art. 17; Merger Reg., Arts. 16; Art. 168a, 173, EU Treaty, OJ C224/1, 31.8.1992; Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities, OJ L319/1 (25.11.88))
Austria		The Cartel Court has competence to impose sanctions for competition law violations. Its decisions may be reviewed by the "Kartellobergericht." Criminal sanctions may be imposed by the criminal courts subject to normal appellate procedures. (Sec. 129)
Belgium	Council for Competition, created by Ministry of Economic Affairs, may impose sanctions. (Art. 36)	Court of Appeal may review decisions of Council for Competition. (Art. 43)
Germany	Competition Council may impose sanctions, appealable to Competition Appeals Tribunal (members of which are appointed by Ministry of Industry)(KKL Secs. 16, 17, 18)	High Court may review decisions of Competition Appeals Tribunal. (KKL Sec. 18)
Finland	The Cartel Court has authority to order penalties on the proposal of the Office of Free Competition, which is an independent authority. (Sec. 8, para. 4)	The decision of the Cartel Court to impose a penalty may be reviewed by the Supreme Administrative Court. (Act on Appeal in Administrative Affairs, 154/1990, Sec. 27)
France	<ol style="list-style-type: none"> 1. Regarding civil violations, Competition Council, an independent authority, may issue orders, except regarding concentrations. 2. Ministry of Economy has competence regarding concentrations, with the non-binding advice of the Competition Council, and to execute sanctions regarding concentrations. The Minister's decisions are not appealable. (Art. 42) 3. Regarding criminal violations, the Procureur de la Republique has competence to prosecute infractions, after transmission of the file by the Competition Council or through other means. (Art. 11) 	The Court of Appeal of Paris may review decisions of the Competition Council. (Art. 15)
Germany	Federal Cartel Office may impose sanctions, subject to review by the Federal Minister of Economics. (Sec. 47(1)OWiG) Land cartel authorities, which are part of the state Ministry of Economy of the Lander, also have specific competences. Minister may order prohibition of a concentration, and FCO may order divestiture of a prohibited merger.(Sec. 44(1)No. 3, GWB)	Berlin Court of Appeals may review decisions of Minister, then Federal Supreme Court. (Secs. 46, 51ff, and 82 GWB) Land cartel authority decisions appealable to Court of Appeal in district where authority located, and ultimately to Federal Supreme Court, on points of law.

<p><i>Greece</i></p>	<p>Competition Commission, which is within the Ministry of Commerce, may impose sanctions. (Secs. 8, 9, 12) Ministry may impose fines for failure to notify a concentration. (Secs. 4, 5) Ministry may prohibit a concentration in certain sectors. (Secs. 4(b)(3), 4(c)(1))</p>	<p>Athens Administrative Court of Appeal may review decisions of Competition Commission and Ministry. (Ch. C, Sec. 14) Council of State may review decisions of Athens Administrative Court of Appeals. (Sec. 15)</p>
<p><i>Ireland</i></p>	<p>Minister of Industry and Commerce may issue prohibition orders; those prohibiting a dominant position must be confirmed by a resolution of both houses of the Oireachtas. (Sec. 14, Act of 1991) Orders prohibiting a merger (either absolutely or conditionally) are subject to annulment by resolution of either house of Oireachtas. (Sec. 9, Act of 1978) No statutory right to appeal, but such orders are subject to challenge in the High Court.</p>	<p>High court may issue injunctions, declarations, and award damages in private actions. Circuit courts have similar powers, subject to limitations on the award of damages. (Sec. 6, Act of 1991)</p>
<p><i>Italy</i></p>	<p>Competition and Market Authority, an independent authority, may impose sanctions, except with respect to certain sectors where other independent authorities are competent. (Art. 20)</p>	<p>The Administrative Court of Latium may review decisions of the Competition Authority. (Art. 33)</p>
<p><i>Luxembourg</i></p>	<p>The Ministry of the National Economy may impose sanctions, after investigation of the case by the Commission of Restrictive Commercial Practices (which is part of the Ministry)(Art. 3)</p>	<p>The Administrative Court may review decisions of the Ministry. (Art. 7)</p>
<p><i>Netherlands</i></p>	<p>The Minister of Economic Affairs may declare that a dominant position is contrary to the general interest, after which he may issue a formal prohibition order. (Art. 24, WEM) The Minister may issue a "declaration of non-binding effect" against a restrictive practice (Art. 19, WEM), and a Royal Decree may be issued against a category of restrictive practices (Art. 10, WEM) which are contrary to the general interest. Any conduct in violation of such declaration is a criminal violation of the law. (Arts. 15, 22 WEM)</p>	<p>1. Decisions of the Minister may be reviewed by the College van Beroep voor het bedrijfsleven (Art. 33, WEM) 2. The Economische Politiechter may impose criminal sanctions for violations of the competition laws, which constitute criminal offenses (Wet Economische Delicten), following prosecution under the general criminal law statutes. The Court of Appeal may review decisions of the Economische Politiechter, and ultimately the High Court</p>
<p><i>Portugal</i></p>	<p>The Competition Council, which is within the Ministry of Commerce, may impose administrative sanctions regarding restrictive practices and abuses of a dominant position (Intro., Law 422/83) Decisions concerning concentrations are taken jointly by the Minister of Commerce and the Minister responsible for the sectors affected by the concentration, following consultation with the Competition Council.</p>	<p>Decisions of Competition Council may be appealed to the Court of First Instance of Lisbon ("Tribunal Judicial Da Comarca De Lisboa") Orders pertaining to concentrations may only be appealed to the Supreme Administrative Tribunal. (Art. 34(2), Law 371/93)</p>
<p><i>Spain</i></p>	<p>Tribunal for Defense of Competition, an independent authority, may issue orders. Government may issue orders with respect to concentrations.</p>	<p>Decisions of Tribunal may be appealed to "Audiencia Nacional Sala de lo Contencioso - Administrativo." (Art. 49) "Sala III Tribunal Supremo" may review the decisions of the government with respect to concentrations.</p>
<p><i>Sweden</i></p>	<p>Swedish Competition Authority, an independent agency, may order an undertaking to terminate infringements of a prohibition under a penalty of fine.</p>	<p>At the request of the Competition Authority, the Stockholm City Court may order an undertaking to pay an anticompetitive behavior charge to deter undertakings from infringing prohibitions. Appeals to the Market Court, which is the final court of appeal.</p>

<p><i>United Kingdom</i></p>	<p>The Secretary of State (President of the Board of Trade), with the consent of Parliament, may issue prohibition orders and partial or total divestiture orders for concentrations and abuses of a dominant position. (Schedule 8, Fair Trading Act 1973; Sec. 10, Competition Act 1980) These orders are legislative acts and, as such, are not reviewable</p>	<ol style="list-style-type: none"> 1 The Restrictive Practices Court may enjoin restrictive practices which are contrary to the public interest or which are the subject of an agreement which has not been registered. The High Court may issue an injunction to enforce an order of the Secretary of State. Breach of either court order constitutes contempt and may be punished as such by the court which issued the order 2 Decisions of the Restrictive Practices Court, the High Court, and the Crown Court may all be appealed to the Court of Appeal, and ultimately to the House of Lords 3. The Magistrates' Court or Crown Court, which are criminal courts, adjudicate cases where obstruction of an investigation (a criminal offense) has been alleged. 4. Decisions of the Magistrates' Court may be appealed to the Crown Court.
<p><i>Canada</i></p>	<p>Bureau of Competition Policy (part of the Federal Department of Consumer and Corporate Affairs) has no power to impose sanctions itself, but may seek the imposition of sanctions from the Competition Tribunal (Secs 77, 79, 91)</p>	<p>Provincial Court may impose criminal sanctions. Superior Court of Criminal Justice or Court of Criminal Jurisdiction may issue orders regarding indictable offenses by individuals. Federal Court - Trial Division may issue orders regarding indictable offenses committed by corporations or individuals. Appeal to Federal Court of Appeal for any decision or order, final or interlocutory, from Competition Tribunal. (Sec. 13)</p>
<p><i>Mexico</i></p>	<p>Federal Competition Commission, an administrative body of the Ministry of Trade and Industrial Promotion "technically and operationally autonomous" consisting of 5 commissioners appointed for 10 year terms by the Federal Executive, may impose administrative sanctions, and report criminal violations to Public Prosecutor. (Ch. 4, Art. 23, 25, 26) Appeals regarding fines may be made to the Commission itself. (Ch. 7, Art. 39)</p>	<p>High level administrative court, Fiscal Federal Court, or Federal Commerce Tribunal may review resolutions of Commission.</p>
<p><i>Switzerland</i></p>	<p>The Federal Cartel Commission, an independent authority composed of 11-15 members appointed by the Federal Council (Bundesrat) from the academic and business world, address recommendations to the enterprise and adopt certain decisions to produce information during an investigation. (Arts. 31, 35) If such recommendations are not accepted, the Federal Department of Economic Affairs may issue orders to require specified conduct. (Sec. 37 KG)</p>	<p>Federal Court may review decisions of Federal Cartel Commission and Federal Department of Economic Affairs.</p>
<p><i>USA</i></p>	<p>Following an initial decision by an administrative law judge, the Federal Trade Commission may impose a divestiture order or a cease and desist order, appealable to Federal Court of Appeals. (15 USC 45)</p>	<ol style="list-style-type: none"> 1. Federal Trade Commission decisions are appealable to a Federal Circuit Court of Appeals. 2. Upon application by the Department of Justice or Federal Trade Commission, Federal District Courts may impose civil and criminal sanctions under Federal antitrust laws, and may order damages in private actions.

APPENDIX I

STAGIAIRES WHO COMPILED SURVEY RESPONSES

Austria	Gerlinde Berger, Renate Mernik, Bernhard Tute
Belgium	Kurt De Loor, Anne Den Tandt, Thys Stifaan
Denmark	Marie Lundsten
Finland	Johanna Juusela
France	Florene Bastien, Fidel Ndeshyo
Germany	Irina Orssick, Bianca Pirk, Bernhard Tute
Greece	Tatiana Papadopoulou
Ireland	Catherine Ryan
Italy	Lucia Antonini
Luxembourg	Florence Bastien, Fidel Ndeshyo
Netherlands	Andrea Leijenaar, Vincent Verouden
Portugal	Natalia Bobo Bjork, Maria Medina Barrio
Spain	Natalia Bobo Bjork, Maria Medina Barrio
Sweden	Ola Nord
UK	Richard Alexander, Emily Joannou, Andrew Walker
Canada	Jane Murphy
Mexico	Serena La Pergola, Maria Jose Rodriguez
Switzerland	Georg Faust
USA, EU	Laraine Laudati

Design of questionnaire, coordination of project, drafting of report: Laraine Laudati

APPENDIX II

INVESTIGATIONS SURVEY QUESTIONNAIRE

6 December 1994

- I. Notification
- A. Is there a notification requirement for:
 - 1. Restrictive agreements?
 - 2. Concentrations?
 - B. If there is a notification requirement, is there a form which must be used?
If so, please attach a copy of the form.
If not, what information must be provided?
 - C. Which authority receives the notification?
 - D. What are the notified authority's responsibilities upon receipt of a notification? (e.g., investigate, decide on legality of activity)
 - E. In practice, does the authority investigate after receiving the notification?
 - F. What other means does the authority use to learn about possible violations? (e.g., consumer or competitor complaints, information from EU or local government authorities)
- II. Investigations
- A. Which authority has the power to investigate? Is it independent or part of a government ministry?
 - B. Can the discovery requests be directed to:
 - 1. Undertakings?
 - 2. Individuals?
 - 3. Third parties?
 - C. What is the authority empowered to do in conducting the investigation?
 - 1. Issue written interrogatories/questionnaires?
 - 2. Issue document requests?
 - 3. Make on-site inspections ("dawn raids")?
 - 4. Question individuals orally?
 - D. What are the consequences of failing to cooperate in an investigation (e.g., court order compelling cooperation, sanctions for contempt)
 - E. Is any individual personally responsible for supplying the answers? If so, who?
 - F. Is favourable treatment offered by the authority for cooperation in an administrative investigation to:
 - 1. Individuals?
 - 2. Undertakings?
 - G. Does the authority have criminal law powers of investigation? If so:
 - 1. Please describe these powers.
 - 2. Can the authority offer individuals immunity from prosecution in exchange for cooperation in providing information to investigators?
 - H. Do the courts play any role in the investigation process? (e.g., issue warrants, subpoenas, review decisions of administrative authorities)

Sanctions Survey Questionnaire

October 20, 1994

I. Type of Sanctions

- A. Can administrative remedies, such as fines and/or prohibition orders, be imposed for:
1. Practices which prevent, restrict or distort competition (e.g., price fixing, production or market restrictions, discrimination in price or other trading conditions, tying arrangements)?
 2. Abuses of a dominant position (e.g. unfair pricing or trading conditions, production or market restrictions, discrimination in price or other trading conditions, tying arrangements)?
 3. Concentrations which create or strengthen a dominant position?
- B. Can criminal sanctions, such as fines and/or imprisonment, be imposed for any of the above?

II. Entities which or individuals who can be fined

Can some or all of the sanctions identified above be imposed against

- A. The enterprise? Which sanctions?
- B. Individuals personally? Which individuals (e.g. responsible officers or employees)? Which sanctions?

III. Severity of sanctions imposed

- A. Are there statutory or regulatory limitations on the amount of administrative or criminal fines that can be imposed? Do such limitations refer to turnover or profits derived from the infringement?

(Optional) What are the three highest fines ever imposed? For what violations? When were they imposed?

- B. Has the imprisonment sanction ever been utilized? How often?

(Optional) What is the longest prison term which has been imposed? For what violation?

IV. Bodies with authority to impose sanctions

- A. Does an administrative body have authority to impose some or all of the sanctions identified above? Which administrative body (e.g. independent authority or part of a government ministry)?
- B. Does a court have authority to impose sanctions or review sanctions imposed by one of the authorities identified above? If so, which court?

APPENDIX III

Member State and Third Country Sanctions Survey List of Statutes

- Austria: Kartellgesetznovelle 1993, BGBl 693/93.
- Belgium: Law of August 5, 1991, concerning the protection of competition.
- Denmark: Danish Competition Act (KKL), January 1, 1990.
- Finland: Act on Restrictions on Competition (Laki Kilpailunrajoituksista), No. 480/92, 27 May 1992.
- France: Ordonnance Relative à la Liberté des Prise et de la Concurrence (No. 86 - 1243 du 1 decembre 1986, J.O.R.F. 9 decembre).
- Germany: Gesetz Gegen Wettbewerbbeschaenkungen(GWB),
- Greece: Act on the Control of Monopolies and Oligopolies and on the Protection of Free Competition, Act 703, September 26, 1977.
- Ireland: Irish Competition Act of 1991, Statute No. 24 of 1991, as commenced by the Competition Act, 1991 (Commencement) Order 1991, SI 249 of 1991; The Mergers, Takeovers and Monopolies (Control) Act 1978, as amended in 1987 and by the 1991 Act.
- Italy: Law No. 287, October 10, 1990.
- Luxembourg: Law of June 17, 1970.
- Netherlands: Wet Economische Mededinging of 28 June 1956 (Stbl. 1958, 413) (WEM); Wet op de Economische Delicten of 22 June 1950 (Stbl. K 258) (WED); Wetboek van Strafrecht of 3 March 1881 (Stbl. 35).
- Portugal: Law N. 422/83, 3 Dec. 1983 (Restrictive Practices and Abuses of Dominant Position); Law N. 428/88, 19 Nov. 1988 (Concentrations).
- Spain: Law N. 16/89, 17 July 1989; Penal Law.
- Sweden: Competition Law, SFS 1993:20.
- UK: Competition Act of 1980, Restrictive Trade Practices Act of 1976, Fair Trading Act of 1973
- Canada: Competition Act, R.S.C. 1985, c. C-34; Criminal code, R.S.C. 1985, c. C-46.
- Mexico: Ley Federal de Competencia Economica, 24 December 1992.
- Switzerland: Federal Act on Cartels and Similar Organizations of 20th December 1985 (Kartellgesetz(KG))(RS251); Federal Act on Administrative Penal Law (RS 173.110).
- USA: Sherman Act, 15 USC Secs. 1-8; Clayton Act, 15 USC Sec. 12-27; Hart-Scott-Rodino Act of 1976, 15 USC Sec. 18a; Federal Trade Commission Act, 15 USC Secs. 41-58; National Cooperative Research Act of 1984, 15 USC Secs. 4301-4306.

APPENDIX IV

INSTITUTIONAL ARRANGEMENTS FOR NOTIFICATIONS AND INVESTIGATIONS

- Austria: Notifications are received and investigations are conducted by the Cartel Court, which is independent.
- Belgium: Notifications are received and investigations are conducted by the Service de la Concurrence, which is within the Ministry of Economics. However, decision-making power rests with the Conseil de la Concurrence, an administrative court which is within the Ministry of Economics.
- Denmark: Notifications are received and investigations are conducted by the Competition Council, an independent authority whose chairman is appointed by the King and whose other members are appointed for 4-year terms by the Ministry of Trade.
- Finland: Notifications are received and investigations are conducted by the Office of Free Competition; investigations also are conducted by the County government. The Finnish competition authorities are independent, but administratively linked to the Ministry of Trade and Industry. Accordingly, their budget is within the control of the Ministry, but it exercises no authority over their operation.
- France: Notifications are received by the Ministre de l'Economie. Investigations are conducted both by the Conseil de la Concurrence, which is independent, and the Ministre de l'Economie. The Ministre de l'Economie can make necessary investigations, and the Conseil de la Concurrence may investigate in areas where it has been delegated responsibility to do so.
- Germany: Notifications are received and investigations are conducted by the Bundeskartellamt and the Landeskartellamt. The Bundeskartellamt is independent of the government and is a higher federal authority. It reports to the Federal Minister of Economics. The extent of the Minister's authority to impose specific instructions on the Bundeskartellamt is controversial, but he/she may impose general instructions regarding decisions pursuant to the GWB. Such instructions do not, however, bind the courts. The Landeskartellamt report to the State Ministries of Economics and are not independent.
- Greece: Notifications are received by the Directorate for Market Research and Competition which is within the Ministry and the Ministry of Commerce. Investigations are conducted by the Directorate for Market Research.
- Ireland: Notifications regarding restrictive practices are received by the Competition Authority and those regarding concentrations, by the Minister of Industry and Commerce. Investigations are conducted by the Competition Authority, an independent body whose members are appointed by the Minister. It may be required by the Minister to investigate a possible abuse of a dominant position or notification of a proposed merger. Under the 1994 bill, the Director of Competition Enforcement, who will be a member of the Competition Authority, would be required to investigate restrictive practices or abuses of a dominant position which he/she suspects to violate the law.
- Italy: Notifications are received and investigations are conducted by the Autorità Garante della Concorrenza e del Mercato, an independent authority.
- Luxembourg: Notifications are received by the Ministre de l'Economie; investigations are conducted by the Commission des Pratiques Commerciales Restrictives, an ad hoc independent authority (but includes among its members fonctionnaires of the Ministre de l'Economie, the Ministre de Justice, and the Ministre des Classes Moyennes), and the Service de la Concurrence, des Prix et de la Protection des Consommateurs, which is within the Minstre de l'Economie. The Ministre has discretionary power to request the Commission to open an investigation. However, the Ministre must make such request if he has been told to do so by the procureur

d'Etat. The Commission has official power to conduct investigations when requested to do so by the Ministre.

- Netherlands: Notifications are received by the Ministry of Economic Affairs; investigations are conducted by the Economic Competition Commission, which is an independent advisory body, and the Ministry. The Ministry's powers of investigation are more extensive than those of the Committee.
- Portugal: Regarding restrictive practices, notifications are received by the Conselho da Concorrência, which can request further information, then send the case to the Direcção-Geral de Concorrência e Precos to "instruct the case," which may include investigation and hearing. The Conselho is responsible to decide whether to grant an exemption. Regarding concentrations, notifications are received by the Direcção-Geral de Concorrência e Precos, which is responsible to "instruct the case," which may include investigation and hearing, followed by making a recommendation to the Ministry regarding legality. The ministry makes the ultimate decision.
- Spain: Notifications are received by the Servicio de Defensa de la Competencia, which is within the Ministerio de Economía y Hacienda. Regarding restrictive practices, the SDC will conduct an investigation and send the case with a proposed disposition to the Tribunal de Defensa de la Competencia, which conducts a further investigation and issues a final decision within 20 days of receipt of the file. Regarding concentrations, upon receipt of a voluntary notification, the SDC must conduct an investigation and prepare an advisory note for the minister. Within one month of the date the notification was filed, the Minister will either take no action, in which case the concentration is deemed to be permitted, or send the case to the TDC for further investigation. Under the latter scenario, the TDC will prepare a non-binding decision, which is sent to the Minister, who forwards it to the government, which issues a final decision within three months of receipt of the file.
- Sweden: Notifications are received and investigated by the Competition Authority, an independent authority.
- UK: Notifications are received by the Office of Fair Trading. Restrictive agreements are investigated by the OFT, and dominant positions and concentrations may be investigated by the OFT and the MMC.
- Canada: Notifications are received and investigations conducted by the Director of Investigation and Research, who heads the Bureau of Competition Policy, which is within the Federal Department of Consumer and Corporate Affairs, a federal government agency.
- Mexico: Notifications are received and investigations conducted by the Federal Competition Commission, an independent authority.
- Switzerland: Notifications are received and investigations conducted by the Wettbewerbskommission, an authority with independent decision-making powers which is administratively attached to the "Eidgenössisches Volkswirtschaftsdepartement."
- USA: Notifications are received and investigations are conducted by the Department of Justice, which is within the federal executive branch, and the Federal Trade Commission, an independent government agency.

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