European Law and Competition Law
Pressures for European Court Reform – Competition and other issues

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Agenda

- Recommendations of 1996 BIICL Report on the Role and Future of the ECJ: 10 years later
  - Have there been radical changes to the EC judicial structure?
  - Is the ECJ coping more effectively with caseload?
  - Has the CFI capacity been expanded?
  - Have the proceedings improved?
  - Are the ECJ/CFI still victims of their own success?
  - What further improvements and/or changes should be recommended?

1996 Recommendations
1) No radical changes to Present Judicial Structure

- No reform of the Community judicial system along the lines of the US Court system
- No creation of Community Regional Courts
- No two-tier ECJ
- No proliferation of specialist tribunals
- No new distribution of jurisdiction between Community Courts and national courts
- No general power of selection of cases to be given to the Community Courts
- ECJ has been given jurisdiction over certain aspects of Third Pillar Conventions
- Creation of a Staff Tribunal
- No dissenting judgments
- No change to the system of appointment of judges
- Term of office has not been extended

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1996 Recommendations
2) Is the ECJ coping more effectively with actual/prospective case-load?

- The size of the ECJ has increased with enlargement (but still 1 judge per Member State)
- No increase in the number of advocates general
- All Opinions can be dispensed with in simple cases
- More flexibility for the ECJ to decide itself whether a case should be heard by a Chamber or the plenary
- No formal specialised chambers
- Assistant rapporteurs in the ECJ
- Further categories of cases could be transferred to the CFI
- Certain direct actions requiring detailed factual examination have been transferred to the CFI
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- Unnecessary to introduce leave to appeal
- locus standi of individuals to bring direct actions has not been broadened

1996 Recommendations
3) Has the CFI capacity been expanded?

- The size of the CFI has increased with enlargement (but still 1 judge per Member State)
- The number of chambers of three and five judges has increased
- Increase in number of legal secretaries (reérendaires)
- Certain technical cases can be heard by a single judge
- Chambers are not specialised in certain technical areas (such as competition)
- locus standi of individuals has not been broadened

1996 Recommendations
4) Have the proceedings improved?

- Changes to the Rules of Procedure no longer need prior unanimous approval of the Council
- More translators
- Extensions of time for distance are abolished and the lodging of applications by fax is permitted
- Submission of long and unmanageable pleadings is discouraged
- No objections of the report for the hearing
- Questions are put in advance of the hearing so as to save time during the hearing
- Rules of Procedure have been clarified to avoid uncertainty
- No changes to the preliminary references procedure, although jurisdiction could now be transferred to the CFI
- Expeleed procedure has been introduced
Is the ECJ still victim of its own success?

- Pending cases:
- New Cases:
- Completed cases:

Duration of proceedings (average in months):

Is the CFI still victim of its own success?

- Pending cases:
- New Cases:
- Completed cases:

Duration of proceedings (average in months):

2006 and beyond

- Delay still affects effectiveness of the judicial system, especially in competition cases
- Further possible improvements and/or changes should be considered and debated:
  - Super-fast track for merger cases?
  - Limit the number of languages?
  - Has the time come for specialised competition chambers or a specialised competition tribunal?
  - Are there more categories of cases to be removed from the CFI to specialised tribunals?
  - Should the CFI also hear preliminary references?