

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

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BIICL Annual Conference, London
June 16th, 2006

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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

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
- AG Opinion 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
- CFI hears State aid cases
- Certain direct actions requiring detailed factual examination have been transferred to the CFI
- Objections to the transfer of preliminary references to the CFI
- 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 (*référéndaires*)
- 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 abolition 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
- Expedited procedure has been introduced

Is the ECJ still victim of its own success?

- Pending cases:
 - ◆ 508 (1995) – 740 (2005)
- New Cases:
 - ◆ 415 (1995) – 474 (2005)
- Completed cases:
 - ◆ 250 (1995) – 574 (2005)
- Duration of proceedings (average in months):
 - ◆ preliminary ruling: 20 (1995) – 20,4 (2005)
 - ◆ direct actions: 17 (1995) – 21,3 (2005)
 - ◆ appeals: 18 (1995) – 20,9 (2005)

Is the CFI still victim of its own success?

- Pending cases:
 - ◆ 385 (1995) – 519 (2000) - 1033 (2005)
- New Cases:
 - ◆ 221 (1995) – 336 (2000) - 469 (2005)
- Completed cases:
 - ◆ 210 (1995) – 318 (2000) - 610 (2005)
- Duration of proceedings (average in months):
 - ◆ 29,3 (1997) – 27,5 (2000) - 25,6 (2005)

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?
