REPORT ON POLICY CONSULTATIONS WITH EUROPEAN COMPETITION AGENCIES

By:

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Economics and International Affairs Branch
Bureau of Competition Policy

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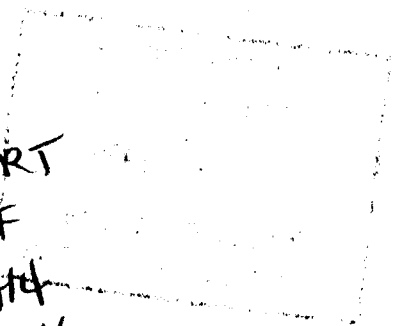

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I. INTRODUCTION

We recently met with officials of competition agencies in France, the European Community, Germany, Sweden and the U.K. as well as relevant committees of the OECD. The meetings took place from June 14-25, 1993. A comprehensive list of organizations and individuals with whom we established contact is attached as Appendix I. The purpose of the meetings was three-fold: (i) to obtain information for use in expanding and finalizing our draft report on *Competition Policy As A Dimension of Industrial Policy: A Comparative Perspective;* (ii) to obtain background materials for use in preparing Canada's input to the proceedings of the OECD Committee on Competition Law and Policy (particularly the so-called Convergence exercise); and (iii) to provide a preliminary "benchmarking" of Canadian competition policy and institutions in comparison to other industrialized countries.

Our meetings provided a wealth of information and insights into comparative aspects of competition policy and corporate restructuring. The meetings affirmed that competition policy is playing an increasingly central role as an aspect of economic policy in the various European jurisdictions. At the same time, the discussions highlighted the extensive challenges that competition authorities are currently facing in responding to massive structural economic changes. As well, they underscored the growing linkages between competition and other microeconomic policies. The meetings also provided important insights into the pros and cons of alternative institutional arrangements for the administration of competition policy.

This report is organized as follows. Part II provides highlights of the discussions held in each location that we visited. Part III provides some overall

impressions regarding the evolving role of competition policy in the rapidly changing European economic, social and political setting. Various Appendixes provide a comprehensive list of the persons we met with as well as organization charts for several of the individual competition authorities.

II. HIGHLIGHTS OF MEETINGS IN EACH LOCATION

(1) OECD (June 14 - 15)

At the OECD, we met with staff of the Competition Law and Policy (CLP) Committee, the Industrial Affairs Division, the Science and Technology Division and the Economic Policy Committee. Our meetings touched on a broad range of issues that were subsequently dealt with in greater depth in discussions with the respective competition agencies. These included the implications of globalization for competition policy, the role of interfirm rivalry in fostering productivity and competitiveness, differing national approaches to competition-efficiency tradeoffs, the links between competition policy and other microeconomic framework and sectoral policies, comparative institutional issues relating to competition policy administration, etc. We also discussed the role of the OECD and other international and national organizations in the ongoing restructuring and marketization of Eastern European economies.

The discussions with the various staff groups highlighted the central importance of competition policy perspectives for the resolution of current economic policy dilemmas. Without this perspective, "solutions" to current problems (e.g. unemployment, trade imbalances, under-investment) that are under consideration by many countries may well have harmful unforeseen consequences. A case in point is the Semi-conductor Chip Agreement of the late 1980s which, it is now generally acknowledged, substantially increased world chip prices with detrimental consequences for a variety of chip-using industries as well as consumers. In fact, many "managed trade" initiatives can be viewed as state-encouraged cartelization or market sharing.

Staff of the Industry Division agreed with the thesis of our draft study on *Competition Policy As A Dimension of Industrial Policy* that an appropriately

designed and applied competition policy is critical to fostering productivity gains and international competitiveness. At the same time, important issues remain to be resolved regarding the appropriate mix of competition and cooperation in fostering innovation and economic growth. Clearly, certain types of cooperative arrangements among firms can strengthen competition and dynamic efficiency. Defining the appropriate scope for such cooperative arrangements is a key challenge for competition authorities in the present environment.

At present, national approaches to the application of competition policy and industrial policy trade-offs differ substantially. Furthermore, even abstracting from differences in policy perspectives, different jurisdictions may be differentially affected by particular business arrangements. Both types of considerations were evident in the recent *de Havilland* case, which is the only merger which has yet been prohibited by the European Community competition authority, DG-IV. This case (in which Canada as well as France and Italy had well-known interests) underlined the interplay between competition policy and national industrial policies and the need for exploration of means to achieve enhanced inter-jurisdictional cooperation.

Our meeting with staff of the Science and Technology Division also provided new information on some potentially very important work underway at the OECD and elsewhere to facilitate the international transfer of generic technologies across industries and among member countries. Essentially, this is a form of government-supported industrial benchmarking and technology transfer on a large scale.

An important example of this work is the so-called EUREKA initiative, which was launched in 1985. This is an umbrella arrangement among the governments of the EC, Germany, the UK, France, the Netherlands, Italy and various other European countries to promote cross-border cooperation among firms particularly in high tech industries. Although the individual parties maintain full responsibility for their participation in projects, EUREKA brings together potential partners and provides technical support as well as access to public and private funding.

OECD staff believe that, in the long run, such activities will help to alleviate current trade and investment imbalances (e.g., Japan-Europe and U.S.-Japan), as well as contributing to higher living standards. We believe that Canada needs to become more aware of these initiatives, which may hold out important benefits particularly for our technology importing industries. At the same time, the competition policy implications of such cooperative arrangements will need careful consideration. As the Science and Technology staff themselves emphasized to us, the key is to strike an appropriate balance between encouraging innovation and ensuring that new technology is not "tied up" indefinitely.

Our meeting with Mr. Henry Ergas of the OECD Economic Policy Committee delved into a range of broader questions with implications for competition policy. Mr. Ergas emphatically rejected the hypothesis that the OECD economies are more exposed to competition now than ever before. This view is belied by the greatly enhanced importance of the services sector in the post-war period. Service industries tend to be local in nature and are extensively protected by government regulations and other non-tariff barriers.

Mr. Ergas also speculated on the broader economic and social ramifications of massive post-war technological change. Increased openness in the manufacturing and resource industries has strengthened citizens' demands for income security programs and the "social safety net". This accounts for much of the increase in government expenditures as a proportion of GDP in recent decades. We are, however, rapidly approaching (or have already transgressed) the limits on governments' fiscal and other capacities to provide the desired services, particularly in view of the ongoing aging of OECD populations.

Historical evidence suggests that the educational level and flexibility of workers will be a key factor in determining the outcome of global competitive rivalries. In this regard, Mr. Ergas suggested that generic skill development and breadth of educational exposure merit somewhat greater emphasis as compared to specialization and depth.

(2) French Competition Authorities (June 15 - 16)

Our meeting with senior staff of the French Conseil de Concurrence provided a useful orientation to the French system of competition law and policy. The discussion at the Conseil was led by M. Fréderic Jenny, a longtime senior rapporteur and participant in the OECD-CLP Committee who recently became Vice-President of the Conseil. (The new President of the Conseil, who also was appointed only recently, is M. Charles Barbeau.)

The Conseil de Concurrence is a key element of the French system. It is an independent body which investigates "domestic" mergers (i.e., those not subject of review by the EC Commission) that are referred to it by the Minister of Finance. Based on its investigations, the Conseil makes public reports and recommendations to the Minister (who alone has the authority to block mergers). The Conseil also has parallel responsibilities for investigation of cartel agreements and other quasi-criminal offences. As well, it participates in the review of certain government regulations that impact on competition.

M. Jenny's overall perspective on competition policy had important points in common with Canadian viewpoints. He emphasized the importance of an efficiency defence in merger cases. In his view, such a defence contributes to the overall objectives of competition policy. At the same time, M. Jenny emphasized that many efficiency claims advanced by parties are not necessarily well founded, and that competition agencies have a duty to examine such claims with appropriate skepticism.

M. Jenny also had a fairly North American view of vertical market restraints - recognizing that these often serve legitimate business functions. In this vein, we discussed the issues arising out of the U.S. Supreme Court decision in the *Kodak* case - i.e., possible loss of efficiency due to constraints imposed on manufacturers' control over the design of servicing/distribution systems. M. Jenny indicated that he shares this concern and that parallel issues have arisen in cases before the Conseil. These issues are of particular concern in relation to specific provisions of the French law dealing with Abuse of Dependency. These provisions appear to be designed to protect the interests of the French

distribution sector. There is some question as to whether the provisions are needed in light of the highly concentrated nature of the distribution sector - i.e., in some cases, it appears that manufacturers are more dependent on their distributors than vice-versa.

M. Jenny also clarified for us certain basic features of Napoleonic Code-based legal systems that are relevant to the application of competition policy in Europe. One key difference is the relative lack of strong distinctions between administrative and criminal law approaches as compared to Canada. This permits authorities to apply quasi-criminal remedies (e.g., fines) without the need for formal criminal proceedings. Also, unlike Canadian constitutional doctrine, the European system does not necessarily require strict separation of investigative and adjudicative functions.

With regard to institutional design, M. Jenny believes that the independent status of the Conseil de Concurrence and the requirement to publish its findings are essential to its effectiveness. We noted, however, that the Conseil's actual effectiveness is clearly constrained by its lack of decision-making authority in the merger area. In fact (as our subsequent interviews made clear), the Conseil functions as a non-politicized "window" in an otherwise highly politicized system of competition law and policy in France. One manifestation of this is that the Conseil's workload in assessing mergers has varied extensively depending on the philosophy of the government holding power in particular periods (as noted, the Conseil has no jurisdiction to investigate mergers unless they are referred to it by the Minister).

Our meeting the next morning with M. Laurent Catenos, Chef, Concentrations d'entreprises et d'études fiscales in the Ministère de l'Économie, des Finances et du Budget provided further insight into the workings of French competition policy and its relation to European Community policy and institutions. M. Catenos is the principal person responsible for advising the Minister of Finance on merger issues. He also has a separate responsibility for representing France in meetings of an Advisory Council of EC Member States that meets to advise the EC Commission (DG-IV) on all mergers that reach the "second stage" of review by the Commission (see below). In the latter capacity, M. Catenos is responsible for representing France's interests in merger cases that

come before the Commission. As became clear during our meeting, M. Catenos also attaches high importance to this aspect of his responsibilities.

M. Catenos indicated candidly that, in his Ministry's view, the EC Commission and other European jurisdictions have sometimes taken an excessively narrow view of the long run benefits of corporate restructuring and the threat they pose to competition. In this regard, he referred specifically to the de Havilland case. To promote its views, his Ministry has recently issued a set of guidelines outlining *A Method For Analyzing Mergers From the Point of View of Competition Law.* This document, comparable to BCP's *Merger Enforcement Guidelines,* outlines the conceptual approach that the Ministry takes to mergers falling within French domestic jurisdiction.

The French *Method For Analyzing Mergers* attaches considerable importance to dynamic efficiencies. It refers specifically to the international dimension of competition, and stresses the role of potential competition in disciplining the exercise of market power. These points of emphasis parallel the Canadian *Merger Enforcement Guidelines* and Competition Act in some respects. It should be noted, however, that there are lingering questions regarding the application of the new *Method* particularly in view of the direct role of the Minister of Finance in merger control in France. In several of our meetings with officials in the other jurisdictions that we visited, concerns were expressed that the Ministry's policy in conjunction with the institutional structure of competition policy in France might permit potentially harmful mergers out of excessive deference to industrial policy objectives.

(3) The European Community (June 17-18)

Our visit to the Commission of the European Communities in Brussels provided a highly stimulating and informative overview of the role of competition policy in the Community. In addition to several branches of DG-IV (the Competition Directorate), we met with officials of DG-III (Industrial Affairs). Each of these meetings served to highlight the central role that has been given to competition policy in the economic and social policy of the Community. This role has clearly been accentuated by the ongoing EC market integration exercise.

This is not to suggest that all issues have been resolved; indeed, as discussed below, the growing prominence of competition policy has generated significant institutional and policy issues that are currently under discussion.

A key point to note is that Commission staff do not expect the overall importance of competition policy in the Community to diminish as a result of the replacement of Sir Leon Brittan by Mr. Karel Van Miert as Commissioner responsible for Competition earlier this year. This is significant since Mr. Van Miert had been portrayed in the business press as a "Belgian socialist" who might moderate the Commission's commitment to competition principles in favour of industrial policy objectives. In fact, as staff stressed, the role of competition policy is entrenched in the original *EC Treaty* (the *Treaty of Rome*) and is necessarily being given even greater importance as a result of the ongoing unification process in the Community.

Under Mr. Van Miert's leadership, increasing attention is being given to the links between competition policy and industrial competitiveness. This is inevitable in view of the continuing crisis of chronic unemployment which major parts of Europe are facing. Mr. Van Miert has taken the position, however, that *promoting competition in the domestic market is an essential element of any effective industrial policy.* In fact, this is the official position of the Community. In this sense, the current concern with competitiveness in the Community has re-inforced the importance of a strong, independent competition policy.

A key point of focus for us at the Commission was with the Merger Task Force, which administers the Merger Regulation that the Community adopted in the fall of 1990. Staff of the Task Force were eager to share their views with us. They espoused a strong commitment to traditional antitrust principles, and were skeptical of arguments that potential efficiency gains should be allowed to justify otherwise anti-competitive mergers. In fact, the Task Force staff alluded to the efficiency defence in the Canadian Competition Act as an example of an undesirable dilution of antitrust principles. They also expressed skepticism regarding the use of potential competition arguments as a basis for permitting mergers that result in high market concentration levels (in contrast to the position taken by French authorities).

It should be noted that the Merger Task Force carries out its functions in the context of specific procedural requirements and institutional machinery that facilitate consideration of countervailing viewpoints. To begin with, in cases meeting the applicable thresholds, the Commission is required to consult directly with DG-III (the Directorate-General for Industrial Affairs). As noted, all cases reaching the second stage of review by DG-IV must also be referred to the Advisory Committee of Member State Representatives. Finally, the EC Commission itself (which holds the final decision-making authority in merger cases) represents a significant mediating mechanism. The Commission brings together as a corporate decision-making body all the EC Commissioners with their diverse policy mandates and regional loyalties.

These institutional features of EC merger policy are not without their own significant problems. To begin with, the role of the Commission is considered by some staff members to be an awkward fit with the terms of the Merger Regulation itself. The reason is that the Regulation requires strict application of competition criteria, as a matter of law. There is some question as to whether Commissioners with other mandates and backgrounds are in a position to exercise this function properly.

The role of the Advisory Committee of Member State representatives is also considered by some Commission staff members to be problematic. There is no question that member states use the Committee as a forum for advancing their industrial policy and related objectives, although arguments must be put forward in the terms of the Merger Regulation. (Staff members of DG-IV did not, however, voice substantial concerns with the separate requirement for consultation with DG-III. Such consultations serve principally as an opportunity for sector specialists to provide technical information relevant to the assessment of individual mergers.)

During our visit, the apparent imperfections in the EC merger control framework were re-inforced by a major study released by the London-based Centre For Economic Policy Research (CEPR).* The study argues that merger assessments prepared by DG-IV for public release are sometimes tailored to fit decisions reached by the Commission based on other (unstated) criteria. This results in a lack of transparency and interferes with the objective of providing consistent guidance for private parties.

In response to these concerns, the the CEPR study makes three principal recommendations: (i) structural separation of investigatory and decision-making functions; (ii) systematic publication of merger analyses and recommendations before they are considered by the decision making body; and (iii) incorporation in the Regulation of an explicit efficiency defence, to facilitate explicit (rather than implicit) consideration of potential gains from particular transactions in a systematic fashion. *Recommendations (i) and (iii) of the CEPR report would bring the European Community closer to the Canadian merger enforcement model!* Recommendation (ii) corresponds broadly to recent demands in Canada for more systematic provision of information related to merger assessments and negotiated settlements.

Our meeting with staff of DG-III (the Commission's Industrial Affairs Directorate) re-inforced our understanding of the overall role of competition policy in the economic and social policy of the Community. *DG-III staff members readily affirmed that competition policy is at the core of EC industrial policy*. Furthermore, they indicated general support for the enforcement policies of DG-IV. In addition to providing general advice on policy design, the staff members we spoke with were responsible for providing input to individual merger cases referred to them by the Merger Task Force. They confirmed that, although they felt free to raise broader issues, a key aspect of their input was the provision of factual information on the structure and functioning of the relevant markets.

One notable difference in emphasis between officials of DG-III and IV relates to vertical mergers. While DG-IV (like competition authorities in other

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D. Neven, R. Nuttal and Paul Seabright, *Merger in Daylight: The Economics and Politics of European Merger Control* (London: Centre For Economic Policy Research, 1993).

industrial jurisdictions) generally adopts a permissive posture towards such transactions, DG-III considers that they merit closer scrutiny. In DG-III's view, vertical mergers often give rise to market foreclosure through control of strategic assets (inputs). DG-III staff affirmed that, in practice, their view would lead to a more interventionist stance than is currently pursued by DG-IV at least in relation to vertical mergers.

A further specific issue of interest regarding merger control in the EC relates to the thresholds for assumption of jurisdiction by the Commission. The Commission is in the process of concluding a review of the present thresholds and the possibility of lowering them (thereby ensuring that a higher proportion of mergers come under Community as opposed to member-states' jurisdiction). Based on our meetings with member-states as well as the Commission, there appears to be wide opposition to a lowering of the thresholds. In fact, some member states (apparently including France) would like to raise the thresholds. This appears to confirm the existence of significant frustrations with the Commission's merger control procedures - although the reasons for such frustration undoubtedly vary across member states.

Apart from merger control issues, our meetings at the EC Commission dealt with a number of other issues of interest. Some of these were:

- The prohibition of anti-competitive agreements under Article 85 of the Treaty of Rome. The EC approach to agreements in restraint of trade merits careful consideration in any re-assessment of the treatment of such agreements in Canada. The EC approach is not without its own apparent downsides (in particular, the broad nature of the prohibition in Article 85 necessitates the review and exemption of many in-offensive agreements - a significant paperburden on firms and the Commission). Nevertheless, the EC regime at least illustrates possible approaches that explicitly clarify the scope for interfirm arrangements that are deemed to yield offsetting efficiencies. In contrast to the Canadian experience, EC exemptions relating to joint ventures and other inter-firm arrangements have been fairly extensively used;

- The treatment of abuses of a dominant position under Article 86 of the Treaty. This remains an important area of activity for the Commission which parallels, at least in some respects, Canadian policy applications;

- The Commission's jurisdiction over "state aids" (subsidies) that distort competition. As is generally well known, this is an important aspect of the mandate of DG-IV. This role responds to a historically perceived need for centralized bureaucratic control to facilitate market integration and address distortions created by traditional heavy reliance in aids in some EC member states. Our understanding of the EC experience does not, however, affirm that competition authorities are necessarily the most appropriate organs of government for dealing with these issues. In fact, the substantive focus of subsidies control differs somewhat from that of competition policy as it is practised in North America. While subsidies have an interface with competition, many of their effects go well beyond competition policy concerns;

- The role of liner shipping conferences (cartels) in international maritime trade. Beginning under the leadership of Sir Leon Brittan, DG-IV has been increasingly active in questioning the traditional acceptance of conferences by the international trading community. It has also challenged shipping arrangements that apparently go beyond the scope of the block exemption for liner conferences (e.g., possibly, agreements between conference and non-conference carriers or intermodal as opposed to pure ocean transport arrangements). Recently, these issues came to a head in complaints relating to the so-called Trans-Atlantic Agreement (TAA). DG-IV staff expressed considerable interest in the Canadian approach to these issues under the Shipping Conferences Exemption Act. They agreed that there is a need for joint consideration of issues in the liner shipping industry by competition authorities in North America, Europe, Japan and Australia, in view of the inherently international nature of the industry;

- The Commission's position on the extra-territorial application of antitrust law by the U.S. and, particularly, the so-called Barr initiative. It seems that the Commission has not taken a strong position against the Barr initiative, ostensibly since it has some sympathy with its underlying goals (i.e., removal of perceived barriers to foreign penetration of the Japanese market). Staff indicated, however, that they generally share Canada's traditional concerns about U.S. extra-territoriality, and support a more cooperative approach to resolution of international competition issues;

It is readily apparent that competition policy is figuring importantly in the ongoing evolution of the European Community. Indeed, the Commission's policies and activities provide extensive insights into diverse aspects of competition policy application in a dynamic political-economic setting. Every effort should be made by the Bureau to learn more about and track the developments unfolding in Brussels.

(4) Germany (June 21-22)

Germany provides another important example of a well-developed competition law system with its own distinctive features that merit closer attention in Canada. Germany is known to exercise a major influence on competition and industrial policy in the EC. In addition, Germany is acquiring enhanced importance as a national model of framework law with its major role in the world economy and financial markets.

Our meetings at the Bundeskartellamt (Federal Cartel Office) in Berlin delved into a broad range of economic, policy and institutional issues. Most of our time was spent in discussions with the Division of Basic Questions which is the central economic and enforcement policy unit of the Office.

The internal organizational structure of the Cartel Office differs significantly from that of the Bureau of Competition Policy. To begin with, staff emphasized that decision-making authority at the Cartel Office is extensively

decentralized. Final decisions respecting individual enforcement cases (as opposed to policy matters) are taken at the level of the relevant enforcement Divisions, by a team usually consisting of the Division Head and two senior officers. Reflecting this role, the enforcement Divisions are officially titled as Decision Divisions. Furthermore, the Decision Divisions (currently 10 in number) are organized along economic-sectoral lines rather than according to sections of the legislation or types of conduct (see Appendix III). This organizational structure frees the senior executives of the Cartel Office to devote their time primarily to enforcement policy development, public relations and managerial functions (the latter activities are supported by the Division of Basic Questions and other central staff groups). The Cartel Office also has a separate unit with responsibility for Germany's input to the EC merger control process and other international matters.

The external institutional relationships of the German Cartel Office and scope for political appeals are also of interest. Decisions taken by the Cartel Office can be appealed in two ways. First, alleged errors of law or jurisdiction may be appealed to the courts. This is comparable to the scope for appeal from decisions by the Canadian Competition Tribunal. Second, merger decisions can be appealed to the Minister of Finance who may overturn them on the basis of specific grounds set out in the Cartel Law such as the overall functioning of the German economy or concerns relating to competitiveness in international markets. Somewhat to our surprise, Cartel Office staff did not view the Minister's role as a major "loophole" in the law and even considered it to have potential benefits. The reasons for their equanimity relate to German political traditions and, specifically, the manner in which the Minister's authority is exercised.

In Germany, the role of the Minister of Finance in relation to merger control is itself subject to effective public interest checks. Before the Minister can overturn a decision of the Cartel Office, the matter must be reviewed by the German Monopoly Commission (separate from both the Cartel Office and the Ministry), which resides in Bonn. The Monopoly Commission also has important responsibilities for ongoing research/policy advice on the structure of the German economy and is respected for its objectivity and independence. Before the Minister can act, the Monopoly Commission issues a public report on

the validity of the specific grounds of appeal. Cartel Office staff indicated that any Ministerial action at variance with the Monopoly Commission's recommendations would be subject to extensive public scrutiny and comment. They provided us with case examples to support this view.

In terms of substantive enforcement policies, particularly in relation to mergers, the Cartel Office adheres to strong antitrust principles. The basic test for prohibition of a merger is that of creating or re-inforcing a dominant position in a market. Application of the test is based on specific structural criteria. Efficiencies are recognized as a factor that may be considered but not as a defence to an otherwise anti-competitive merger. The Cartel Office maintains strongly that an effective competition policy contributes positively to industrial competitiveness.

Another area of interest regarding substantive enforcement policies in Germany relates to horizontal (inter-firm) agreements. In contrast to their strict approach to mergers, the Cartel Office recognizes that such arrangements can have significant efficiency benefits. The Cartel Law contains specific exemptions for rationalization and specialization agreements that have been effectively utilized by firms. The more lenient treatment of agreements reflects a fundamental perception that agreements that preserve the ultimate independence of firms are less threatening to competition policy objectives than mergers (the ultimate form of structural consolidation). In fact, Cartel Office staff argued that *some inter-firm agreements that it has approved have helped to maintain the viability of small and medium-sized enterprises, thereby furthering competition policy goals.* Clearly, this viewpoint is of interest in relation to any re-visiting of Canadian law relating to conspiracies and inter-firm arrangements.

The work of the Cartel Office is currently proceeding in the context of massive structural changes resulting from the integration of the former East Germany into the German national economy and state. In this regard, the Cartel Office works with other German government agencies and particularly the Treuhandanstalt, which is the agency responsible for the privatization of the state-owned enterprises (SOEs) inherited from the old Communist regime. A key issue which has arisen in the privatization process is the extent to which the SOEs may be acquired by (potentially dominant) West German firms operating in the same markets.

Further insight into these issues was provided by a visit to the Treuhand in the company of Cartel Office staff. The scale of the Treuhand's activities is massive - in total, it is responsible for privatizing some 10, 000 enterprises (some of which are being broken up and sold as multiple independent units). This makes it the world's largest holding company, responsible for what is arguably the world's largest corporate break-up and divestiture program.

The Treuhand currently consists of about 4,000 employees. It will be automatically sunsetted approximately two years from now under the terms of its enabling legislation. The first head of the Treuhand (which came into existence only in June 1990) was assassinated in April 1991, seemingly by disgruntled supporters of the former Communist regime. In pursuing its mandate, the agency must negotiate not only with the Cartel Office but also the EC Commission (DG-IV), in regard to both merger and potential state aids issues based on subsidies provided to make the SOEs marketable.

(4) Sweden (June 23)

Sweden provides another example of a country in which competition policy has recently started to play a central role in national economic policy. In fact, *Sweden recently adopted an entirely new (and stronger) competition law, as a key element of its switch toward a market oriented development strategy.* The new law, which came into force on July 1, 1993, is also viewed as a key step in the process of Sweden's planned accession to full membership in the European Community. The new law is to be administered by the Swedish Competition Authority which itself was established only in July 1992, replacing the previous National Price and Competition Board and Competition Ombudsman. The Swedish experience is of considerable relevance to Canada based on obvious parallels in our economic structure (resource-based, major trading nation, small size relative to major trade partners) and policy orientation (traditionally mixed economy seeking improved competitiveness and access to markets).

The new Swedish Act is modelled directly on and substantially replicates the corresponding articles of the European Community Treaty (i.e., Articles 85 and 86). In addition, block exemptions based on those in force in the European Community are being provided for specialization agreements, R&D agreements, exclusive distribution systems, motor vehicle distribution and servicing, patent and know-how licensing and franchising.

This approach is somewhat at variance with previous proposals developed by the Swedish competition authorities. In fact, the decision to adhere strictly to the European Community approach was clearly a "top down" measure to facilitate accession to the Community. This has given rise to a number of transitional issues of concern to the Authority (and, apparently, important parts of the Swedish business community). Additional block exemptions may be needed to cover specific practices or sectors of the Swedish economy. On the other hand, some of the many block exemptions that are deemed appropriate at the Community level may not be considered desirable in Sweden.

With regard to institutional design, the Swedish Competition Authority incorporates a mix of investigative, rule-making and adjudicative functions. It can order firms to terminate infringement of a prohibited practice or transaction. It can also provide "negative clearance" indicating than an agreement or practice is not subject to prohibition. In addition, on request by the Authority, administrative fines may be imposed by the Stockholm City Court. Appeals from decisions of the City Court lie with the Swedish Market Court, which is the final court of appeal. Both the City Court and the Market Court are to be composed of judges and economic experts. There is no provision for Ministerial intervention or appeals. Staff of the Competition Authority emphasized that Ministerial intervention in individual cases would be fundamentally at odds with the Swedish administration system.

In addition to its law enforcement and rule making functions, the Swedish Competition Authority has wide-ranging responsibilities for promotion of competition through advocacy of regulatory and other policy reforms as well as competitive government procurement practices. For example, recently, staff of the Competition Authority and the former Competition Ombudsman were instrumental in the successful comprehensive deregulation of the Swedish

taxicab industry. *The Authority also has a general responsibility for promotion of a "competitive culture" in Sweden. It plays a key role in the interpretation and enforcement of international commitments relating to competition such as the EEA Agreement which provides for application of competition rules in trade between EC and EFTA countries.*

A key example of the Swedish Competition Authority's involvement in policy development that is of particular relevance to Canada relates to the electricity market. In the spring of 1992, the Swedish Parliament adopted guidelines calling for far-reaching deregulation of electricity generation, transmission and distribution. Currently, the Competition Authority is assisting a special government commission overseeing the reform by working out the specific implications of the new Competition Act for the electricity industry. It is expected that a number of current practices in the industry will be prohibited under the Act. This will re-inforce the effect of deregulation. Clearly, the Authority's activities in this area merit ongoing monitoring by Bureau staff.

(5) The United Kingdom (June 24 - 25)

The competition policy system of the United Kingdom is characterized by a distinctive tripartite institutional structure. The precise roles and responsibilities of the respective institutions vary depending on the type of activity (i.e., mergers, monopolies, anti-competitive practices, etc.). In general terms, however, the Office of Fair Trading (OFT) is responsible for initial investigatory work in relation to mergers and prosecution of anti-competition practices. A separate, independent agency, the Monopolies and Mergers Commission (MMC), is responsible for formal investigations and issuance of public reports. In addition, the Minister of Trade and Industry carries out several key functions including referral of mergers to the MMC on recommendation by the OFT, and final decision making with respect to anti-competitive mergers (additional details are provided in Appendix 4). In addition, it should be noted that the various statutes administered by these authorities incorporate broad public interest as well as competition based criteria. Thus, in its totality, the UK system represents a distinct public interest-oriented approach.

It is important to note that, for the most part, *the numerous UK officials we interviewed did not advocate their system as an appropriate model for other countries.* Rather, they stressed that its special legal and institutional features were largely products of historical circumstances. Furthermore, *officials recognized that the degree of Ministerial involvement and public interest flavour of their law potentially exposed Ministers to significant pressures and could give rise to significant discrepancies in policy application* (in recent years, there have been attempts to limit these possibilities through Ministerial doctrines that emphasize competition as opposed to public interest criteria).

One particular aspect of the merger review process in the UK may, nevertheless, merit further consideration. Before being referred to the MMC, all mergers under investigation by the OFT are referred to an interdepartmental panel. The panel, which is chaired by the Director-General of Fair Trading, includes representatives from the Department of Trade and Industry. The main purpose of the process is to ensure that all relevant information sources are effectively tapped. It does not provide other departments with any particular check or "veto" on merger referrals. Based on our interviews, this process does not appear to impede and may, in fact, facilitate effective application of the law.

As is generally known, the UK law in the area of cartels is particularly weak. On the last day of our meetings in London, a decision was released by the Court of Appeal that further attenuated the law. The decision dealt with the liability of firms in the U.K. ready-mix concrete industry for conspiratorial/bid rigging activities on the part of employees and middle level managers. (In Canada, this issue has been resolved by a statutory amendment which clarifies the liability of firms in such situations). In its decision, the Court held that the firms were not liable, on the basis of various corporate policy announcements that formally directed employees not to engage in unlawful activities.

Another aspect of UK competition law that seems odd by North American standards relates to the treatment of "monopolies." In addition to dealing with specific exclusionary practices, the UK law provides for detailed regulation of industries that are deemed to be monopolies. This may include incentive-oriented or traditional rate of return regulation. The determination of whether industries constitute monopolies is based on structural grounds such as

market concentration levels. Thus, industries subjected to regulation may not even be natural monopolies.

The apparent weakness/outdated character of key aspects of the UK competition legislation is somewhat paradoxical, in view of the country's strong commitment to market principles at the level of national economic policy. During the course of our meetings in the various European capitals, there were several indications of the lengths to which the U.K. is going in championing the application of market principles within the European Community. This is evident, for example in Prime Minister John Major's well known stand against the EC social charter which is a major bone of contention with other EC member states. It should be noted that several proposals for reform/strengthening of aspects of UK competition law are currently under consideration by various parties including the Ministry of Trade and Industry. There is no indication, however, as to when these proposals may be introduced/adopted by Parliament.

Finally, the UK has implemented pioneering initiatives in deregulation and pro-competitive restructuring of previously heavily regulated industries such as transportation, telecommunications and electrical energy. Recommendations put forward by the Monopolies and Mergers Commission in various investigations of these industries have figured importantly in this process. In addition, the Director-General of Fair Trading has specific responsibilities under the UK Broadcasting Act, the Financial Services Act and other regulatory legislation. This aspect of UK competition policy merits careful tracking by Canada.

III. Summary Observations/Implications For Canada

As will be apparent from the foregoing, our meetings in the various European capitals yielded extensive information and insights relevant to issues facing the Bureau today. The insights obtained will be further distilled in preparing the final version of our draft report on *Competition Policy as a Dimension of Industrial Policy: A Comparative Perspective* which will be available in September. A number of preliminary observations, however, can be put forward for discussion at this point.

To begin with, it is apparent that there are significant differences between the overall approach to competition policy as it is practised in Europe and the approaches followed in North America. These differences include: (i) a tradition of placing somewhat greater emphasis than is the case in North America on the use of competition policy as an instrument to support related policy goals (e.g., market unification) as opposed to "pure" efficiency objectives; (ii) an apparent emphasis on regulation of competition through fairly detailed instruments such as the various block exemptions as opposed to the North American preference for case-by-case evaluation under general statutory provisions/jurisprudential doctrines; (iii) the wider availability in Napoleonic Code-based legal systems of quasi-criminal remedies (e.g., fines) without use of formal criminal procedures; and (iv) less emphasis on strict separation of investigative and adjudicative functions than seems to be required at least under Canadian constitutional doctrines. These differences should be kept in mind in drawing lessons from the European experience.

There are also important differences in the design and application of competition policy among the various European countries. In this regard, two overall "camps" may be distinguished. On the one hand, Germany, the EC Commission itself and Sweden clearly represent a fairly structuralist approach, particularly in the area of merger policy. In a sense, the U.K also belongs in this group, with the qualification that important aspects of its legislation are seriously out of date. On the other hand, France and, we understand, several of the southern European countries take a much more behavioural approach, attaching considerable importance to the role of dynamic efficiencies and potential competition.

Notwithstanding these differences in orientation, there are major points of commonality in the experience and particularly the challenges that are currently facing European and North American (perhaps especially Canadian) competition authorities. The common challenges include: (i) recognition of the need to adapt competition policy to increasing internationalization and regional integration initiatives; (ii) pressures to ensure that competition policy facilitates (or at the very least does not impede) efficient corporate re-structuring; (iii) demands for improved transparency and organizational efficiency; and (iv) a requirement to accomplish all of the foregoing in the context of a complex and evolving federal system (i.e., the Community itself).

In view of the above, the European experience offers a number of insights that are relevant to the role of competition policy in Canada. A few of these are as follows:

- At the most basic level, *the importance of competition policy is likely to be enhanced rather than diminished by globalization and regional economic integration*. As noted, in Europe, successive efforts to achieve economic and now political integration have been accompanied by increased rather than diminished reliance on competition policy. In fact, an effective competition policy is seen as a key means for achieving meaningful integration. There is no doubt, however, that as it evolves regional integration may require adjustments in competition law and institutions, to promote the existence of a level playing field across national boundaries. Of course, the extent of any changes needed will depend on many factors including the breadth and depth of integration contemplated.

- In Europe, *a vigorous competition policy is generally seen as being supportive of industrial competitiveness*. As such, there is no conflict between competition policy and an effective industrial policy. This view comes out most strongly in the European Community itself, where Industrial Affairs staff and the Commission as a collectivity affirm the importance of competition policy. It is also evident in the strong role of the Bundeskartellamt in Germany and the recent adoption of new competition legislation in Sweden, as a key element of its general program of economic re-vitalization. This observation supports recent emphasis on competition as a key element of industrial policy in Canada.

- Our meetings also indicated that, *in substantive terms, Canadian competition law and policy compare favourably with European laws and policies in facilitating efficient corporate restructuring*. Broadly speaking, competition authorities in both Europe and Canada attempt to deal effectively with the small minority of merger and other transactions while "staying out of the

way" of the larger proportion of deals that do not raise competition issues. In important respects, however, European jurisdictions and particularly the EC itself still employ a more "structuralist" approach than Canada in this area. Unlike Canadian law, for example, the European Merger Regulation provides no explicit efficiency defence. As noted, changes called for in the recent CEPR report on EC merger policy would actually bring the EC approach closer to Canada.

- Nevertheless, specific aspects of European competition law provide useful points of reference/models for possible re-visiting of aspects of Canadian competition law in the future. Foremost in this area are the EC block exemptions for joint ventures and specialization agreements, along with comparable provisions of French and German law. As noted, the EC appears to have had considerably greater success than Canada in promoting the use of these arrangements as instruments of dynamic innovation and rationalization. In addition, the overall Continental approach to inter-firm agreements which provides explicit scope for consideration of efficiency benefits is of interest as a point of comparison with Canadian law in this area. There is also a wealth of European jurisprudence on basic aspects of antitrust enforcement such as market delineation which merits greater attention in Canada.

- The European experience also exemplifies the *increasing complementarity of policy development and law enforcement functions in an effective competition agency*. Increasingly, effective application of competition policy requires consideration of sectoral or framework policy reforms as alternatives/complements to enforcement actions. Furthermore, the economic and policy expertise of competition agencies enables them to contribute effectively to related policy fields. This is perhaps most evident at the level of the EC itself, in the subsidy and other policy responsibilities of DG-IV. As noted, in Sweden and the UK competition authorities have also been extensively involved in important market-oriented reforms in key economic sectors such as transportation and electrical energy. Finally, in all of the jurisdictions

we visited, competition authorities are actively involved in addressing an increasingly complex series of questions relating to international aspects of competition law and policy.

- With regard to the institutional structure of competition policy, considerable caution is warranted regarding the potential transferability of particular European models. In many respects, the various agencies we visited embody peculiarly European concepts of administrative law and organization. It should be noted, moreover, that the Europeans themselves do not regard features such as Ministerial involvement in competition law administration as a panacea. In fact, they recognize that, *unless properly constrained, such involvement can create unwanted exposure for Ministers in regard to particular cases.*

- The European experience suggests, nevertheless, some limited institutional innovations that may warrant consideration in Canada. As noted, in both the EC and the UK, the competition authorities routinely consult with industrial affairs personnel on merger cases undergoing in-depth assessment. This helps to ensure that relevant information on issues such as market delineation is effectively tapped. Of course, any such consultations would be subject to over-riding statutory requirements for confidentiality.

- Finally, the European experience provides extensive insights into issues relating to the application of competition policy in federal systems of government. While this is not a "front burner" issue at present, it may well be of interest in the context of the future evolution of the Canadian federation.

In closing, we wish to emphasize the need for closer monitoring and assessment of developments in European competition law and policy. The dynamic European economic and political environment offers a rich source of insights into major enforcement, policy and organizational issues facing the Bureau of Competition Policy. In all the jurisdictions we visited, there was a high level of interest and awareness of the need for sharing of information and

more contacts among national competition agencies. In this context, it is vital that Bureau personnel maintain and extend their range of contacts with European agencies.

July 29, 1993

Appendix I

ORGANIZATIONS AND PERSONS CONTACTED

(1) OECD

Competition Law and Policy Committee: Gary Hewitt, Joe Phillips and Sally Van Siclen.

Science, Technology and Industry Directorate: Mr. Jean Guinet and Mr. Martin Smith (Science and Technology Division), Mr. Graham Vickery (Industry Division) and other officials.

Economic Policy Committee: Mr. Henry Ergas (Senior policy advisor).

In addition to the above pre-arranged meetings, we met with Dr. Michel Andrieu, a former Director of the Economics and International Affairs Branch at BCP. Dr. Andrieu is working with a central OECD staff group on economic and social policies for coping with chronic severe unemployment as is currently being experienced in major parts of Europe.

(2) France

Conseil de Concurrence: M. Frederic Jenny (Vice-President du Conseil) and M. Guy Charrier (Rapporteur).

Ministère de l'Èconomie et des Finances, Direction Générale de la Concurrence de la Consommation et de la Répression des Fraudes: M. Laurent Catenos (Chef du Bureau, Concentrations d'entreprises).

M. François Souty (Commissionaire Bureau B1).

(3) European Community

DG IV - General Policy and International Aspects: Mr. Auke Haagsma (Head of Unit) and Mr. Paul Malric-Smith (Principal Administrator).

DG-IV - Merger Task Force: M. Emil Paulis (Team Leader), Ms. Thalia Lingos (Visiting Attorney from U.S. FTC) and Mr. Franz Heistermann (Administrator).

DG-IV - Economic section: Mr. David Deacon (Section head) and Mr. Francisco Caballero (Senior economist).

DG-III - Industrial Affairs: Mr. Peter Smith (Head of International Competitiveness section) and Mr. Sean Irving (Principal administrator).

DG-IV - Industrial Aids: Mr. Francis Rawlinson (Principal administrator).

DG-IV - Transport and Tourism Division: Mr. Jonathan Faull (Head of Division) and Mr. Louis Ortiz Blanco (Principal administrator).

Mission of Canada to the EC: Mr. Stephen Brereton (Counsellor, Trade Policy).

(4) Germany

Bundeskartellamt (Federal Cartel Office): Mr. Hartwig Wangemann (Chief, International Section).

Bundeskartellamt - International Section: Ms. Karin Gollan.

Bundeskartellamt - Division of Basic Questions: Dr. Knud Hansen (Head of Division) and Ika Sacksofsky (Economist).

Treuhandanstatt (Privitization agency for Eastern Germany) - Government/International Relations: Mr. Joachim Fried (Business Director).

(5) Sweden

Swedish Competition Authority - Agency Head: Mr. Jörgen Holgersson (Director-General).

Swedish Competition Authority - International Secretariat: Ms. Monica Widegren (Director) and Ms. Lisbeth Segerlund (Officer).

Swedish Competition Authority - Energy and Process Industry Division: Mr. Bo Diczfalusy (Head).

Also met with exchange visitors from new Austrian Competition Authority.

(6) United Kingdom

Office of Fair Trading - International Branch: Mr. Edward Whitehorn (Head), Ms. Amanda Bate (Administrator).

Office of Fair Trading - Economics Branch: Mr. David Elliott (Head) and Mr. Michael Parr (Deputy Head).

Office of Fair Trading: Mr. Andrew J. White (Head of Mergers Secretariat).

Office of Fair Trading: Mr. Peter Rostron (Assistant Director, Legal Division).

Monopolies and Mergers Commission: Mr. Geoffrey Sumner (Senior Economic Advisor), Mr. Julian Proudman (Senior Industrial Advisor), Mr. Alan Bevan (Economic Advisor).

Department of Trade and Industry: Mr. John Alty (Head of Competition Policy 1), Mr. Alan Cooper (Head of Competition Policy 2), and Ms. Janet Noakes (Industrial Competitiveness Division).

Canadian High Commission: Ms. Cécile Latour (Counsellor, Commercial/Economic).

Carré Diderot - 3 & 5 boulevard Diderot - 75572 Paris Cedex 12

(Téléphone préfixe 44B)

Appendix II

INSPECTION GÉNÉRALE DES SERVICES
M. François LEROUX M [illegible] Tél :72395
M. Jacques MASSON M 317 Tél :72398
M. Claude SCHWARTZ M 321 Tél :72396

INSPECTION GÉNÉRALE DES LABORATOIRES
M. Guy SUDRAUD Tél. 69 20 62 80

Directeur général
M. Christian BABUSIAUX
B 7131 Tél. 72700

Chef de cabinet : Mme Josette CAILLAUD 7117 Tél. 72393
7122 Tél. 72805
Chargé de mission : M. Michel SINGER M 319 Tél. 72397
Commission interministérielle des salaires 3116 Tél. 72404
Conseil national de l'alimentation (CNA) :
M. Jean-Jacques BERNIER 7120 Tél 72806

SERVICE DE LA CONSOMMATION DE LA QUALITÉ ET DE LA SÉCURITÉ
M. Pierre GABRIÉ
B 7107 Tél. 72311

- **SOUS-DIRECTION G** Consommation
  M. Michel PINCHON
  B 6105 Tél. 72385
  - G1. Politique générale de la consommation. Vie associative
    M Pierre GONZALEZ
    B 6136 Tél. 72387
  - G2. Droit de la consommation
    M. Jean Luc RAYNAUD
    B 6113 Tél. 72389
  - G3. Information et communication
    Mme Catherine DONZEL
    B 7308 Tél. 72391
- **SOUS-DIRECTION H** Qualité et sécurité
  M. Jean BRUNEL
  ~~B 6~~ Tél. 72375
  5155
  - H1. Politique générale de la qualité et de la sécurité
    Mme Roseline LECOURT
    B 6223 Tél. 72377
  - H2. Hygiène
    Mme Nicole ZYLBERMANN
    B 6337 Tél. 72379
  - H3. Qualité et sécurité des produits industriels
    M. J. André BOUCHAND
    B 6307 Tél. 72381
  - H4. Développement et contrôle de la qualité
    Mme Nicole BLAIZE
    B 6413 Tél. 72383

SERVICE DE LA CONCURRENCE ET DE L'ORIENTATION DES ACTIVITÉS
M. Noël RENAUDIN
B 3107 Tél. 72313

- **SOUS-DIRECTION A** Etude et animation
  M. Gilbert ARNAULD d' ANDILLY
  B 3113 Tél. 72315
  - A1. Etudes et prévisions
    M. Yves MERIAN
    B 3216 Tél. 72317
  - A2. Salaires publics et privés
    M. Yves MOUTON
    B 3115 Tel. 72319
  - A3. Animation des services déconcentrés
    M. Jean-Pierre FUSTER
    B 4222 Tél.72321
  - A4. Coordination scientifique et laboratoires
    M. Albert PEROUX
    B 4 136 Tél. 72325
- **SOUS-DIRECTION B** Concurrence et contentieux
  Mme Annie TARGA
  B 3423 Tél. 72327
  - B1. Politique générale de la Concurrence . Pratiques anticoncurrentielles
    M.Laurent FLEURIOT
    B 3421 Tél. 72329
  - B2. Affaires juridiques, contentieux, pratiques restrictives
    M. Georges PASQUI
    B 3320 Tél. 72331
  - B3. Concentrations études financières. Aides
    M. ~~Jacques LOVERGNE~~ Laurent CATENOS
    B 3137 Tél. 72333
  - B4. Marchés publics. Bâtiment, travaux publics
    M. Armand QUESADA
    B 4118 Tél. 72335

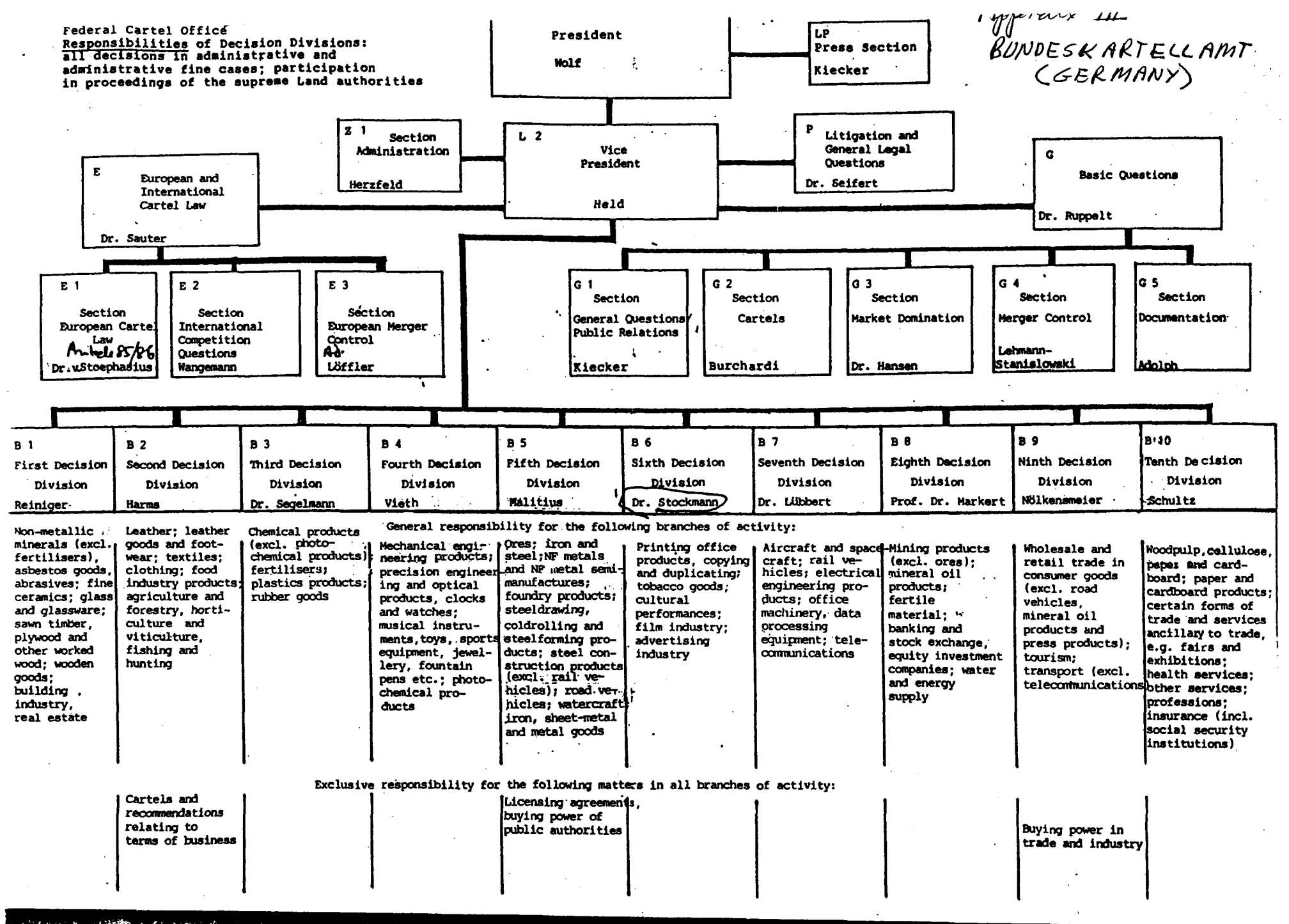
SERVICE DES PRODUITS ET DES MARCHÉS
M. Claude MALHOMME
B 5107 Tél. 72337

- **SOUS-DIRECTION C** Industrie et commerce
  M. Noël DIRICQ
  B 4107 Tél. 72339
  - C1. Energie Chimie
    M. Jean Louis GAUGIRAN
    B4109 Tél. 72341
  - C2. Biens d'équipement et de consommation
    M. ~~Laurent CATENOS~~
    B 4412 Tél.72343
  - C3. Commerce Loyers
    M. Jean-Yves MARTIN
    B 4331 Tél. 72345
- **SOUS-DIRECTION D** Produits agricoles et alimentaires
  M. Paul BOEDA
  B 5427 Tél. 72347
  - D1. Orientation et gestion des marchés agricoles
    Mme Aline PEYRONNET
    B 5331 Tél. 72349
  - D2. Boissons
    Mme Dominique FILHOL
    B 5306 Tél. 72351
  - D3. Produits laitiers et carnés et corps gras
    M. Daniel HULAUD
    B 5412 Tél 72353
  - D4. Fruits et légumes frais
    M. Jean Claude EVRARD
    B 4212 Tél. 72323
  - D5. Industries agricoles et alimentaires
    Mme Véronique PY
    B 5210 Tél. 72355
- **SOUS-DIRECTION F** Services
  M. Luc VALADE
  B 5139 Tél. 72359
  - F1. Affaires sociales et santé
    M. Bertrand LE BOHEC
    B 5109 Tél. 72361
  - F2. Tarifs publics et professions réglementées
    M. Eugène JULIEN
    B 5134 Tél. 72363
  - F3. Prestations de services privés
    Mme Liliane MERVILLE
    B 5133 Tél. 72365
- **SOUS-DIRECTION E** Gestion administrative
  M. Hervé THOUROUDE
  B 2105 Tél. 72367
  - E1. Gestion du personnel
    M. Didier de CALBIAC
    B 2135 Tél. 72369
  - E2. Recrutement et formation
    M. André FISZER
    B 2115 Tél. 72371
  - E3. Budget, équipement, traitements
    M. Georges NASICA
    B 2337 Tél. 72304
  - E4. Informatique et bureautique
    M. Bernard OGIER
    B M331 Tél. 72373

Décembre 1992

Federal Cartel Office
Responsibilities of Decision Divisions: all decisions in administrative and administrative fine cases; participation in proceedings of the supreme Land authorities

Appendix III
BUNDESKARTELLAMT (GERMANY)



General responsibility for the following branches of activity:

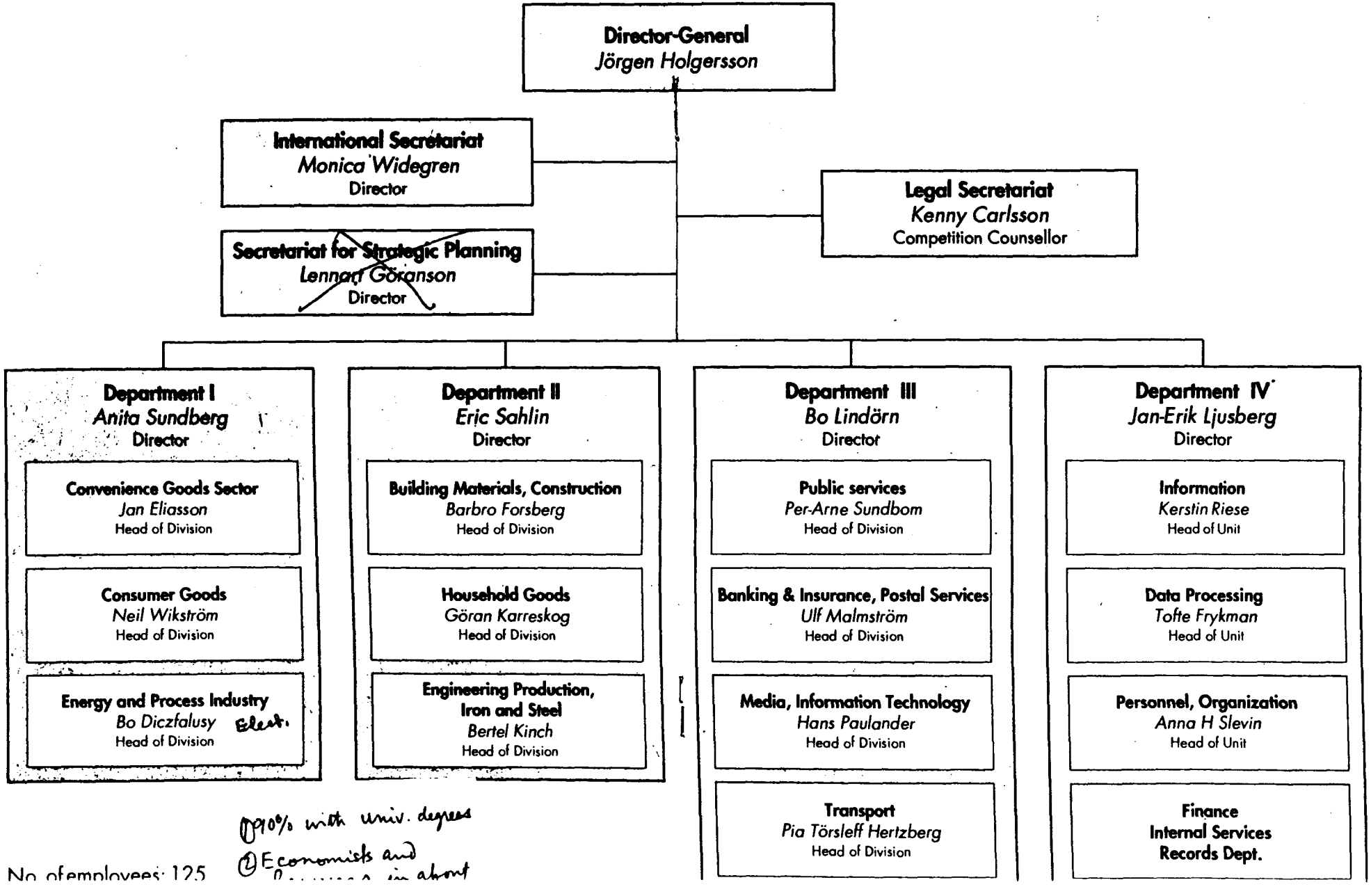
B 1	B 2	B 3	B 4	B 5	B 6	B 7	B 8	B 9	B 10
Non-metallic minerals (excl. fertilisers), asbestos goods, abrasives; fine ceramics; glass and glassware; sawn timber, plywood and other worked wood; wooden goods; building industry, real estate	Leather; leather goods and footwear; textiles; clothing; food industry products; agriculture and forestry, horticulture and viticulture, fishing and hunting	Chemical products (excl. photochemical products); fertilisers; plastics products; rubber goods	Mechanical engineering products; precision engineering and optical products, clocks and watches; musical instruments, toys, sports equipment, jewellery, fountain pens etc.; photochemical products	Ores; iron and steel; NF metals and NF metal semi-manufactures; foundry products; steeldrawing, coldrolling and steelforming products; steel construction products (excl. rail vehicles); road vehicles; watercraft; iron, sheet-metal and metal goods	Printing office products, copying and duplicating; tobacco goods; cultural performances; film industry; advertising industry	Aircraft and spacecraft; rail vehicles; electrical engineering products; office machinery, data processing equipment; telecommunications	Mining products (excl. ores); mineral oil products; fertile material; banking and stock exchange, equity investment companies; water and energy supply	Wholesale and retail trade in consumer goods (excl. road vehicles, mineral oil products and press products); tourism; transport (excl. telecommunications	Woodpulp, cellulose, paper and cardboard; paper and cardboard products; certain forms of trade and services ancillary to trade, e.g. fairs and exhibitions; health services; other services; professions; insurance (incl. social security institutions)

Exclusive responsibility for the following matters in all branches of activity:

B 1	B 2	B 3	B 4	B 5	B 6	B 7	B 8	B 9	B 10
	Cartels and recommendations relating to terms of business			Licensing agreements, buying power of public authorities				Buying power in trade and industry	

Swedish Competition Authority - organization

Appendix IV



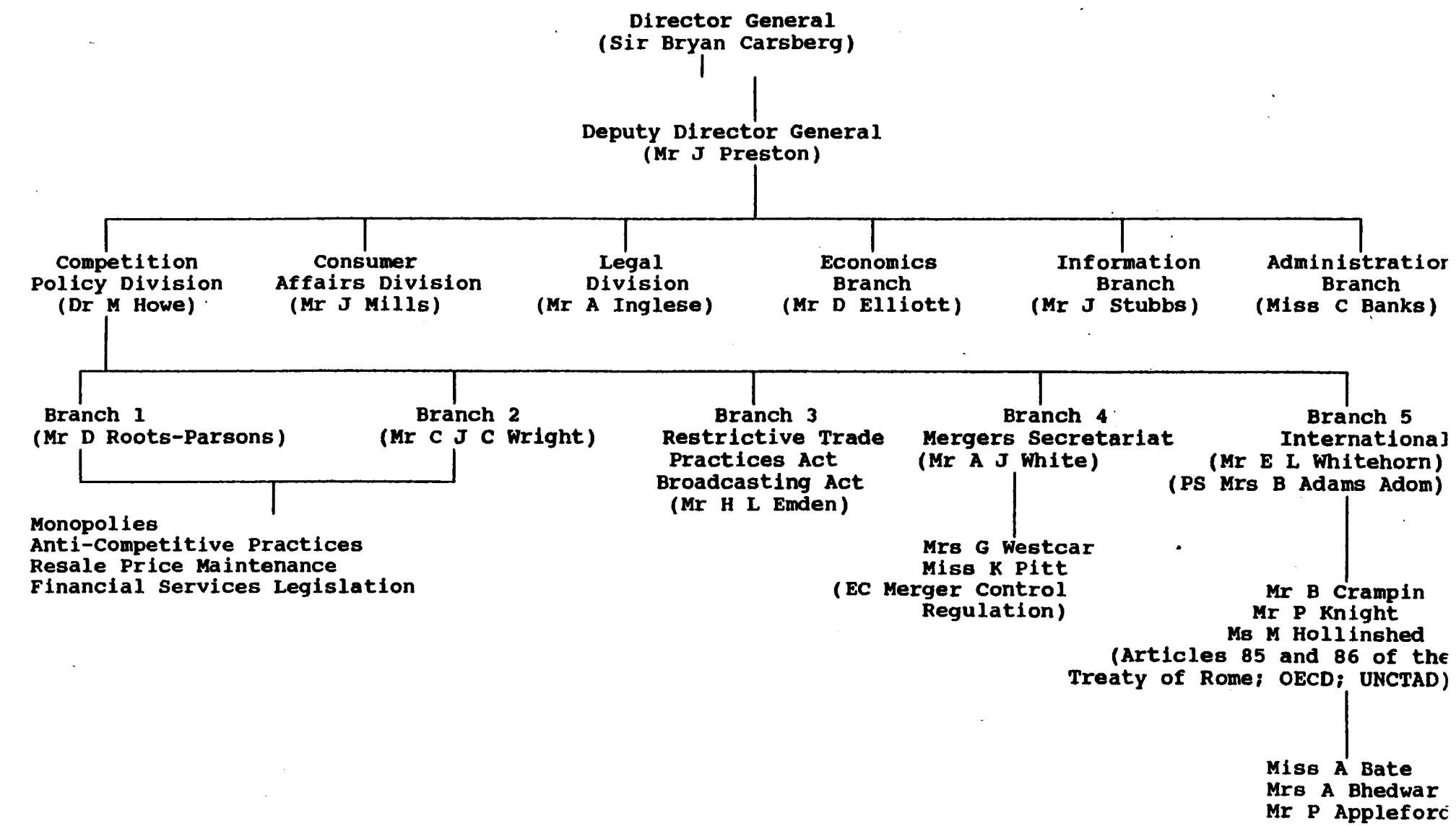
No of employees: 125

90% with univ. degrees

Economists and

(United Kingdom)

Appendix V



(Branch functions for Competition Policy Division are detailed on the attached sheet.)

F:\CP3D\Function.FMP

BRANCH ORGANISATION WITHIN COMPETITION POLICY DIVISION (continued)

BRANCHES 1 AND 2 DENNIS ROOTS-PARSONS AND CHRISTOPHER WRIGHT	BRANCH 3 HENRY EMDEN	BRANCH 4 ANDREW WHITE	BRANCH 5 EDWARD WHITEHORN
* MONOPOLIES * ANTI-COMPETITIVE PRACTICES * RESALE PRICE MAINTENANCE * FINANCIAL SERVICES LEGISLATION	* RESTRICTIVE AGREEMENTS * BROADCASTING LEGISLATION	* MERGERS	* INTERNATIONAL WORK
· Considering complaints (including those about resale price maintenance) · Conducting Office investigations under the Competition Act 1980 · Advising on references to the Monopolies and Mergers Commission (MMC) on monopolies or anti-competitive practices under the Fair Trading Act 1973 or Competition Act 1980, respectively · Following up MMC reports on monopolies and anti-competitive practices, including negotiations, monitoring and review of any resultant undertakings **In addition Branch 2 has responsibility for** · Administering the Restrictive Trade Practices Act 1976 in respect of restrictive agreements within the financial and professional services sectors · Administering the Director General's responsibilities under the competition provisions of the * Financial Services Act 1986; * Companies Act 1989; and * Courts and Legal Services Act 1990	· Administering the Restrictive Trade Practices Act 1976 (except in relation to restrictive agreements within the financial and professional services sectors) including investigating suspected cartels · Carrying out the Director General's competition responsibilities in respect of broadcasting under the Broadcasting Act 1990 and other legislation	· Carrying out initial scrutiny of all mergers 'qualifying' for reference to the MMC under the merger provisions of the Fair Trading Act 1973 · Preparing papers for the Mergers Panel and the Director General's advice to the Secretary of State for Trade and Industry · Negotiating undertakings before and after a merger reference to the MMC · Liaising with the Commission and advising on cases falling within the EC Merger Control Regulation	· Liaising with the Commission as UK 'competent authority' in relation to EC competition legislation · Representing the UK on the OECD Committee on Competition Law and Policy and at UNCTAD on competition policy matters · Liaising with overseas countries' competition authorities . Arranging visits and attachments to the Office from overseas organisations.