investigation and enforcement functions are assigned to DG-IV. The Commission is, in effect, prosecutor, judge and jury in all competition matters, although its action is subject to review by European Courts. Appeals brought by natural and legal persons against Commission decisions relating to mergers will be heard by the Court of First Instance, subject to appeal to the Court of Justice. The grounds for appeal are limited to the legality of acts and failure to act.[57]

Articles 85 and 86 of the Treaty of Rome deal respectively with restrictive practices and abuse of dominant position. A Merger Regulation was adopted in 1989 and came into force in September 1990. The Commission has also enacted an Implementing Regulation dealing with the content of pre-notification filings and various procedural matters.

Under the Merger Regulation, mergers are allocated between the Commission and the national authorities of member states largely, but not exclusively, on the basis of the turnover of the companies involved. The largest transactions are to be exclusively reviewed by the Commission, while smaller transactions will generally be reviewed exclusively by national authorities, unless they request the Commission to handle a merger.[58]

Under a referral procedure (Article 9 of the Regulation), a member state can inform the Commission that a merger with a "Community dimension" poses specific competition concerns for its national market. If the Commission is in agreement, it may deal with the merger itself or refer it to the competent authorities of the member state. If the Commission fails to take a decision within three months, the matter is deemed to have been referred.[59]

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[57] At least four appeals were pending before the CFI at the beginning of 1993. The nature of the appeals have highlighted the fact that the Merger Regulation does not expressly provide for the rights of third parties, either substantively or procedurally, to complain to the Commission and to provide input into the merger review process. This is arguably because the Regulation is concerned with the overall structure of competition, not with protecting individual competitors. For a discussion of this issue, see John Davies and Chantal Lavoie, "EEC Merger Control: A Half-Term Report Before the 1993 Review?", World Competition, Volume 16, No. 3, March 1993, p. 28.

[58] A concentration has a Community dimension where:

a) the combined aggregate worldwide turnover of all the undertakings concerned is more than ECU 5,000 million; and
b) the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than ECU 250 million, unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. For banks, other financial institutions and insurance companies, special rules for the calculation of thresholds are prescribed.

[59] The Regulation provides for the review of thresholds by the end of 1993 by means of a qualified majority of the Council acting on a proposal from the Commission. It also provides for a contemporaneous review of the rights of Member States to "claw-back" jurisdiction under the distinct national market provisions of Article 9.