

COMPANY LAW

ISSUE

The 1992 project includes proposed measures to regulate and harmonize provisions of company law/competition policy, effectively expanding the competence of the EC in this field.

BACKGROUND

The traditionally fragmented EC market has often prevented EC firms from achieving economies of scale necessary for economic efficiency. The removal of barriers under the single market initiative has prompted considerable restructuring within the EC as firms attempt to build the necessary scale to compete in an increasingly global environment. This is evident from the significant increase in takeover activity in recent years. As this restructuring is necessary to improve competitiveness, it is important that the process encounter as few barriers as possible.

EC POSITION

Regarding the restructuring process as positive, the EC is attempting to encourage mergers and takeovers. Directives have been proposed to harmonize divergent national regulations, with the view to ensuring transparency, equality for shareholders and limiting speculation. In May 1990, the Commission proposed eliminating barriers to take-overs, albeit with mixed reviews. But despite encouraging such activity, the EC remains cautious in preserving competition. Under the new merger control regulation, after Sept. 1990, the Commission will have primary authority to vet mergers of a "community dimension" (those exceeding a given threshold). The effects of such mergers on competition in the EC is to be the principal criterion for evaluation.

The EC also desires to encourage the creation of pan-European companies. This may be achieved through the formation of European Economic Interest Groupings (EEIGs), providing for cooperation in such areas as R&D, and/or, the establishment of a European Company, recognized under a single set of rules in all Member States. Revisions to the proposed European Company Statute are expected after the European Parliament renders its opinion.

CANADIAN POSITION

Canada recognizes that EC company law initiatives are taking place in a non-discriminatory manner. Consequently, Canadian firms operating in the EC should not be adversely affected; our subsidiaries will continue to be treated as "European", subject to the same opportunities and constraints as EC-based firms. Similarly, the fact that competition is to be the primary basis for evaluation under the merger control regulation is regarded as positive. However, at the present thresholds, most Canadian firms will be subject to national regulation, which may be less liberal under certain circumstances.