

jurisdiction to the competent authorities in the relevant country. It should be noted, however, that the Commission, in these cases, has the option of retaining jurisdiction, while taking account of the objective "to maintain or restore effective competition in the market concerned".²⁰

Concentrations that do not surpass the Community dimension thresholds, unless they are referred to the Commission, are subject to control by the relevant Member States. The implementation of the Regulation, however, has not ruled out the possibility of smaller concentrations also being reviewed under Articles 85 and 86 of the EEC Treaty. Although the Regulation has increased the procedural difficulties relating to the application of Articles 85 and 86 to smaller mergers by the EC Commission, the Commissioner responsible for competition policy (Sir Leon Brittan) has indicated that the Commission may still examine concentrations falling between the current Community dimension thresholds and those that he is advocating for application after December 1993.²¹ In addition, the National Courts of the Member States may still apply the EEC Treaty competition provisions to some concentrations falling between the current and proposed Community dimension thresholds.²²

2.3 The Criteria for Assessing Concentrations

The competitive implications of concentrations should be the main criteria used for their assessment under the Merger Control Regulation. Article 2(3) provides that only those concentrations that create or strengthen a dominant position, "as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it," will be found incompatible with the common market.²³ Furthermore, the Commission, in its analysis, is required to take account of "the need to preserve and develop effective competition within the common market".²⁴

Article 2 of the Regulation also lists a number of other factors that the Commission must take into account. These include, for example, the remaining actual or potential competition in markets that are affected, the market position and financial standing of the relevant companies, barriers to entry, and trends in supply