

# EU Modernisation: Making it work in the UK.

Oxford Competition Policy  
Conference

15<sup>th</sup> July 2003

# Jonathan Rees

Director – Consumer and Competition Policy  
Directorate

Department of Trade and Industry

## DTI's Aim

- “Prosperity for All”
  - Innovation
  - Enterprise
  - Fair Markets
- Among the best in the world by 2006
  - Empowered consumers
  - Protection of consumers
  - Effective competition regime
- Working with others

# Four Building Blocks

- Competition Act 1998
- Enterprise Act 2002
- Modernisation
- New Merger Regime

# Key Changes

- Prohibition System for CA'98
- SLC Test for mergers
- Targetting Markets
- Criminalisation of Cartels
- Independent Competition Bodies

# Context and Principles

- Significant Institutional Change
- Align CA '98 where possible
- Reduce potential burden on
  - business
  - regulators
- Ensure clarity: guidance

# DTI's Role

- Designate NCAs and National Courts.
- Lay down procedures for UK NCAs investigating under Articles 81/82.
- Specify penalties under Articles 81/82.
- Specify how additional remedies will operate.
- Provide for appeals under Articles 81/82.

# Process of Implementation

- Friends Group
- Practitioners Workshops
- Meetings with Business and Legal representatives
- 2 Formal Consultations
- Draft Statutory Instrument



# The Government's proposals 1

- **Notifications:** the domestic notification system should be removed and NCAs might operate an extra-statutory system of written “Opinions” for cases which present novel or unresolved points of law.
- **Response:** Yes

# The Government's proposals 2

- **Investigations:** entry to domestic premises should be by warrant in every instance and our NCAs should be given the express power to seal premises under both Art 81/82 and the Competition Act.
- **Response:** Yes

# The Government's proposals 3

- **Penalties:** maximum penalty for breaches of Art 81/82 or the Competition Act should be aligned.
- **Response:** Yes: alignment with Commission Penalties

# The Government's proposals 4

- **Remedies:** new power for OFT to accept commitments under Ch I/II and interim measures dealt under Arts 81/82 in the same way as they currently are in our national law.
- **Response:** Yes

# The Government's proposals 5

- **Exclusions:** principle of equal treatment of agreements under both legal frameworks.
- **To retain** - exclusions where minimal risk of EC law applying or where domestic exclusion tracks one in EC law.
- **To remove** - exclusions which differ in scope from a similar exclusion at EC level or where no EC equivalent exists.

# The Government's proposals 6

## To remove:

- the Exclusion Order for vertical agreements.
- the competition scrutiny regime in the Companies Act for bodies “recognised” as qualifying or supervisory bodies.

# The Government's proposals 7

## To remove:

- Power to create Producer Responsibility Schemes.
- agreements given clearance under the Restrictive Trade Practices Act 1976.

# Making it work in Europe

- ECN
- Guidance
- Case allocation
- Continuing Evaluation



# ECN

- Intranet: NCAs from 25 countries plus Csion.
  - good co-operation and collaboration
- Working Groups
  - allocation of cases
  - information exchange
  - joint investigations
  - leniency
  - IT infrastructure
- Internal Co-operation Manual

# Guidance

## Commission Notices

- network of competition authorities
- concept of effect on inter-state trade
- co-operation with national courts
- interpretation of Article 81(3)
- written opinions
- treatment of complaints

# Case Allocation

- Authority best placed to act
  - location of anti-competitive effects
  - location of evidence
  - effect of intervention
- One stop shop as often as possible
- Commission take where
  - Community interest or other Community provisions
  - MS not agreed or more than 3 substantively affected.
- MS fine for effects in another MS where possible

# Timetable

- 27<sup>th</sup> June – First Consultation Period Ends
- 12<sup>th</sup> August – Exclusions Consultation Period ends
- 30<sup>th</sup> September – Publish Outcome
- Autumn – Public Draft Statutory Instrument (SI)
- December – SI to Parliament
- 1<sup>st</sup> May 2004 – SI and Regulation in force

# Some Challenges

- An effective network?
- Soft Harmonisation?
  - Penalties
  - Leniency
- Prioritisation?