

Report on Competition Policy 2008

European Parliament resolution of 9 March 2010 on the Report on Competition Policy 2008 (2009/2173(INI))

The European Parliament,

- having regard to Article 107(3)(b) and (c) of the Treaty on the Functioning of the European Union (ex-Article 87(3)(b) and (c) of the EC Treaty),
- having regard to the Commission's Report on Competition Policy 2008¹,
- having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty²,
- having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (EC Merger Regulation)³,
- having regard to Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of Treaty to categories of vertical agreements and concerted practices⁴,
- having regard to Commission Regulation (EC) No 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector⁵,
- having regard to Commission Decision 2005/842/EC of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest⁶ (Commission Decision on State aid to public services),
- having regard to the Commission Communication of 5 December 2008 entitled 'The recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition'⁷,
- having regard to the Commission Communication of 17 December 2008 on a temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis⁸,

¹ COM(2009)0374.

² OJ L 1, 4.1.2003, p. 1.

³ OJ L 24, 29.1.2004, p. 1.

⁴ OJ L 336, 29.12.1999, p. 21.

⁵ OJ L 203, 1.8.2002, p. 30.

⁶ OJ L 312, 29.11.2005, p. 67.

⁷ OJ C 10, 15.1.2009, p. 2.

⁸ OJ C 16, 22.1.2009, p. 1.

- having regard to the Commission Communication of 9 February 2009 entitled ‘Guidance on the Commission’s enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings’¹,
- having regard to the Commission Communication of 25 February 2009 on the treatment of impaired assets in the Community banking sector²,
- having regard to Commission Communication of 23 July 2009 on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules³,
- having regard to the Commission Communication of 13 August 2009 on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis (2008/C 270/02)⁴,
- having regard to the Commission White Paper of 2 April 2008 on damages actions for breach of the EC antitrust rules⁵ (White Paper on Damages) and to Parliament's resolution of 26 March 2009 in that regard⁶,
- having regard to the Commission Notice on a Best Practices Code on the conduct of State aid control proceedings⁷, the Commission Notice on a simplified procedure for the treatment of certain types of State aid⁸ and the Commission Notice on the enforcement of State aid law by national courts⁹ (Simplification Package),
- having regard to the Commission Guidelines on State aid for environmental protection¹⁰,
- having regard to the State Aid Scoreboards for 2008 and 2009,
- having regard to the Commission's review of 7 August 2009 of guarantee and recapitalisation schemes in the financial sector in the current crisis,
- having regard to its resolution of 22 February 2005 on State aid in the form of public service compensation¹¹,
- having regard to its resolution of 10 March 2009 on the Reports on Competition Policy 2006 and 2007¹²,

¹ OJ C 45, 24.2.2009, p. 7.

² OJ C 72, 26.3.2009, p. 1.

³ OJ C 195, 19.8.2009, p. 9.

⁴ OJ C 270, 25.10.2008, p. 8.

⁵ COM(2008)0165.

⁶ Texts adopted, P6_TA(2009)0187.

⁷ OJ C 136, 16.6.2009, p. 13.

⁸ OJ C 136, 16.6.2009, p. 3.

⁹ OJ C 85, 9.4.2009, p. 1.

¹⁰ OJ C 82, 1.4.2008, p. 1.

¹¹ Texts adopted, P6_TA(2005)0033.

¹² Texts adopted, P6_TA(2009)0099.

- having regard to its resolution of 26 March 2009 on food prices in Europe¹,
 - having regard to Parliament’s written declaration of 19 February 2008 on investigating and remedying abuse of power by large supermarkets operating in the European Union²;
 - having regard to Rules 48 and 119(2) of its Rules of Procedures,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on Industry, Research and Energy and the Committee on the Internal Market and Consumer Protection (A7-0025/2010),
- A. whereas the exceptional economic circumstances of the last two years have necessitated exceptional measures,
 - B. whereas the European Union has taken the unprecedented step of having recourse to Article 107(3)(b) and (c) of the Treaty on the Functioning of the European Union,
 - C. whereas at times of crisis well-functioning markets are essential, and competition rules should be applied flexibly but strictly,
 - D. whereas protectionism and a distortion of competition would only deepen and prolong the crisis,
 - E. whereas the growing budget deficit and public debt in many Member States may slow down economic recovery and economic growth for years, possibly decades, to come,
 - F. whereas Member State governments have granted guarantees on bank funding as a response to the financial crisis since October 2008; whereas the issuance of guaranteed bonds has been sizeable and has provided banks with a significant source of funding and insurance against the risks faced by the financial system,
 - G. whereas empirical analyses suggest that the Member State governments’ guarantees have generated a number of effects and distortions, such as a reduction of the spread of private bonds, which need to be taken into account when considering extending them in 2010,
 - H. whereas the ability of transnational businesses to make extensive use of tax havens and offshore centres as part of their tax avoidance strategies contravenes the principle of fair competition,
 - I. whereas tax governance is an important factor in maintaining favourable conditions for fair competition, and in enhancing the functioning of the internal market,

General remarks

1. Welcomes the Report on Competition Policy 2008, particularly its focus chapter on cartels and consumers; supports the creation of the Consumer Liaison Unit; notes that the existence of cartels harms consumers; regrets the difficulty for consumers to reap the benefits of competition;

¹ Texts adopted, P6_TA(2009)0191.

² OJ C 184 E, 6.8.2009, p. 23.

2. Highlights the fact that cartels are among the most serious violation of competition law, disrupt the value chain, are detrimental to consumers and have a very negative impact on the economy; encourages the Commission to maintain its strong enforcement to prevent and act against cartels; welcomes instruments such as the settlement package, which allows the Commission to settle cartel cases by means of a simplified procedure where companies, having seen the evidence, choose to acknowledge their involvement in the cartel and the fine imposed on the parties is reduced; recalls that competition policy and the comprehensive enforcement of competition rules are essential for a properly functioning and competitive European internal market, enhancing efficiency, entrepreneurial excellence and the protection of consumers; takes the view, in particular, that the fight against cartels is central to ensuring that consumers benefit from a competition regime through lower prices and a broader choice of products and services;
3. Demands to be involved on a broad basis in the shaping of competition policy, including the introduction of a co-legislative role and a requirement that Parliament be regularly informed about any initiative in that field;
4. Calls on the Commission to inform Parliament during the course of 2010 what specific action in the field of competition it intends to take as a result of the entry into force of the Lisbon Treaty;
5. Calls on the Commission to report to Parliament in detail and annually about the follow-up to Parliament's recommendations, and explain any departure from Parliament's recommendations;
6. Encourages the Commission to initiate a steady and permanent dialogue with consumers' associations to identify competition problems and enforcement priorities; requests a full report on the activities of the Consumer Liaison Unit of DG Competition;
7. Calls on the Commission to make publicly available all evaluations and studies referred to in its future annual competition reports and to make use of independent and reliable expertise for those evaluations and studies;
8. Recalls its request to the Commission to undertake an urgent review of staff resources at the Directorate-General for Competition and ensure that the resources allocated meet the increasing workload;
9. Stresses the need for clear, robust and SME-friendly competition rules based on the 'think small first' principle anchored in the Small Business Act for Europe;
10. Calls on the Commission, in the next report, to include a dedicated focus chapter on SMEs and competition; points to the high cost of the patent system for SMEs, due in particular to the threat of litigation from non-practising entities; draws attention to open innovation and knowledge commons; calls on SMEs to exploit FP7 results under open access;
11. Calls on the Commission to make use of Article 12 of the Treaty on the Functioning of the European Union (ex Article 153(2) of the EC Treaty), which states clearly that 'consumer protection requirements shall be taken into account in defining and implementing other Union policies and activities', as a legal basis for future internal market legislation;
12. Asks the Commission to push for the implementation of the telecom package;

13. Regards positively the publication of the Commission Communication entitled ‘Guidance on the Commission’s enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings’; believes that the Guidance is a step forward since it means more transparency and predictability regarding a possible intervention by the Commission but that it should never limit or restrict the capacity of the Commission to act in that field under what is now the Treaty on the Functioning of the European Union;
14. Highlights that in 2008, for the first time in the history of EU competition policy, coercive fines have been imposed for failure to comply with a previous Commission decision;

State aid

15. Stresses that it is important for the Commission to monitor the use of State aid carefully in order to ensure that these support arrangements are not used to protect national industries in a manner detrimental to the internal market and European consumers;
16. Considers it essential, therefore, when assessing whether State aid is compatible with the Treaty, to find the right balance between the negative effects of State aid on competition and public finances and its positive effects in terms of common interests;
17. Calls on the Commission to evaluate the external dimension of the effects of the types of bank regulation envisaged, particularly on the competitiveness of European banks;
18. Takes the view that State aid policies taken in relation to financial institutions and the economic recovery process were helpful to stabilise financial market and to tackle the effects of the credit crunch on the real economy;
19. Notes that State aid policy is an integral part of competition policy and that State aid control reflects the need to maintain a level playing field for all undertakings carrying out activities in the European single market; in this context, wonders to what extent State aid granted to the financial market has caused distortions of competition; calls for an independent report to be drawn up about the potential distortive effects of State intervention in the financial sector; asks the Commission to report on restructuring progress made by the beneficiaries of State aid and to provide more clarity concerning the repayment of State aid and possible sanctions for failure to repay; urges the Commission to clarify the binding restructuring measures related to potential distortive effects resulting in differences in repayment conditions between Member States; calls for greater clarity on the criteria for divestments and on their medium-term impact on the firms in question;
20. Is concerned about the subsidies and distortions generated by the guarantees on bank funding granted by Member State governments; urges the Commission to assess the extent of subsidies related to guarantees on bank funding and thus analyse their conformity with EU competition law and the measures needed to correct any distortions related to those guarantees;
21. Calls on the Commission to investigate further, as a matter of urgency, why State aid granted to banks is not being passed on to the real economy, and to take measures against banks that demonstrably fail or refuse to pass on the benefits of State aid;
22. Notes that the Commission has already started the process of phasing out State support and

mandating restructuring and divestitures; acknowledges that those processes must be flexible in order to be successful; calls, nevertheless, for guidance by the Commission concerning those processes; believes that State intervention should not be unduly prolonged and that exit strategies should be elaborated as soon as possible;

23. Insists upon the need to coordinate exit strategies, in particular as regards the phasing out of the support to the banking sector; underlines that such coordination is essential to avoid any distortion of competition resulting from a situation where banks could be subsidised to some extent in those countries where bank support programmes are retained in contrast to countries where such programmes are phased out;
24. Believes that the system of competition rules has weathered the storm so far, but that the crisis has brought home the urgent need for an EU framework for cross-border crisis management in the financial sector, including a solution for the 'too-big-to-fail' institutions, a quick and full implementation of the recommendations of the de Larosière Report, including a single European regulator, a deposit guarantee system and a bail-out fund or equivalent system;
25. Requests that the Commission report on national State aid measures, the differences between the national schemes, their possible distortive effects on competition and the economic divergence that might result therefrom; calls on the Commission to prepare proposals for a more coherent, single European approach;
26. Calls on the Commission to step up its investigation of the scope for illegally combining State aid on the one hand and Community instruments such as the structural funds and the Globalisation Adjustment Fund on the other, so as to ensure the consistency of its action;
27. Invites the Commission to explain what criteria will be used to decide on a possible extension of the Temporary Community Framework for State aid measures;
28. Insists that State aid should be compatible with the goals of the Lisbon-Göteborg Strategy and the climate-energy package; urges Member States to remove harmful subsidies which, inter alia, foster fossil fuel consumption or production that increase greenhouse gas emission; more broadly, emphasises the need to undertake Strategic Environmental Assessments (SEAs) of policies and Environmental Impact Assessments (EIAs) of projects foreseen in the ambit of the recovery package;
29. Welcomes the new guidelines on State aid for environmental protection within the framework of the climate-energy package introducing normalised evaluation for minor issues and detailed evaluation for significant issues;
30. Calls on the Commission to publish, during the course of 2010, a comprehensive report on the effectiveness of State aid granted for 'green recovery' (bringing about a substantial shift towards sustainability, in particular in the automotive sector) and State aid for environmental protection;
31. Calls for similar reporting on State aid granted for support to SMEs, training, R&D and innovation;
32. Suggests that the phase-out of the Temporary Community Framework for State aid measures to support access to finance in the current financial and economic crisis should

take into consideration the economic situation (the length of recovery and the size of the fall in GDP) of the Member State concerned;

33. Calls on the Commission to sustain, within the telecom sector, its efforts to achieve greater transparency in the charge rates for fixed and especially mobile operators;
34. Emphasises the need to look into the challenge presented by tax havens and off-shore centres as regards, inter alia, unfair competition and financial stability;
35. Reiterates its call for the introduction of a Common Consolidated Corporate Tax Base;
36. Urges the Commission to inform Parliament about its review of the Commission Decision on State aid for public services, which has been due since 19 December 2008 and which should now take into consideration the entry into force of the Lisbon Treaty;
37. Notes with concern that the recovery of illegal State aid is a lengthy and cumbersome process, and that a small number of Member States is responsible for nearly all pending cases; encourages the Commission to tighten up procedures further and to keep up the pressure on Member States, in particular on repeat offenders;
38. Asks the Commission for a thorough investigation into the generalised large-scale use, by some European firms, of low-cost highly skilled temporary labour contracts and internships, as an abusive economic strategy that is detrimental to the principles of decent work and a source of competition distortion;
39. Underlines that facilitating risk capital financing for SMEs is essential to promote fair competition;
40. Calls on the Commission to evaluate and report on the degree to which, if at all, the different national support schemes in the automobile industry have contributed to other Community objectives, in particular sustainability and environmentally-friendly technologies; urges the Commission to assess competitiveness within this market, in particular the relationship between OEMs and first- and second-tier suppliers;
41. Welcomes the publication of the Simplification Package;

Antitrust

42. Welcomes the adoption by the Commission of the White Paper on damages actions for breach of antitrust rules; believes this is a victory for consumer protection within the European Union;
43. Recalls that cartels harm the economy and represent some of the most serious violation of competition law; believes that such infringements of competition law counteract the interests of citizens of the Union since they imply that the advantages of lower prices resulting from competition cannot be passed on to consumers; reiterates in this context that any forthcoming proposal on collective redress must respect Parliament's view expressed in its resolution of 26 March 2009 on damages actions for breach of the EU antitrust rules and insists that Parliament must be involved in the adoption of such act by means of the co-decision procedure;
44. Calls on the Commission to improve coordination between the competition law approach

and the consumer law approach in its initiatives;

45. Welcomes the very firm stance the Commission has taken on anti-competitive behaviour in recent years, as it causes great harm to consumers and to the economy; highlights the need for broad public support for competition policy, and democratic legitimacy ensured by involvement of the European Parliament; is concerned that the use of ever higher fines as the sole instrument may be too blunt, not least with a view to potential job losses as a result of the inability to pay, and calls for the development of a wider range of more sophisticated instruments, covering such issues as individual responsibility, transparency and accountability of firms, shorter procedures, the right of defence and due process, mechanisms to ensure the effective operation of leniency applications (in particular to overcome the interference caused by discovery processes in the US), corporate compliance programs and the development of European standards; favours a 'carrot-and-stick' approach with penalties that serve as an effective deterrent, in particular for repeat offenders, while encouraging compliance;
46. Takes the view that, when multiple infringements of competition law are committed by the same company, stronger deterrence measures are needed to implement antitrust rules in cartel cases or to combat abuses of dominant position;
47. Calls on the Commission and the Member States to introduce the principle of individual liability;
48. Calls on the Commission to consider the role of compliance programmes as an instrument in the fight against anti-competitive behaviour;
49. Calls on the Commission to define specific criteria pursuant to which undertakings should be considered to have acted intentionally or negligently;
50. Calls on the Commission to define specific criteria pursuant to which parent companies should be made jointly and severally liable for cartel-like behaviour on the part of their subsidiaries;
51. Points out that SMEs are comparatively harder hit by disproportionate fines than larger companies;
52. Feels that fines should be proportionate to the breach; also proposes that, in appropriate circumstances, relevant amounts paid in compensation be taken into account when calculating the fine; asks the Commission to review the basis for calculating fines and, if appropriate, to incorporate the new fining principles in Regulation (EC) No 1/2003;
53. Calls on the Commission to introduce a 'one-stop shop' for leniency applications;
54. Asks to be duly informed and consulted concerning any amendment of the Motor Vehicle Block Exemption Regulation, within a timeframe which allows Parliament to undertake adequate scrutiny and to make a thorough contribution, taking into account the urgent need to provide the sector with a predictable horizon that allows it to take the appropriate measures;
55. Emphasises the need for effective cooperation with Parliament, and with consumer and small businesses organisations, concerning any amendments of the Block Exemption

Regulation applicable to Vertical Agreements; stresses that a regulatory framework which encourages cohesive action by various market operators is the best way to address potential consumer detriment caused by lack of choice;

56. Recalls the request to carry out a proper scrutiny, including a hearing in Parliament of end user organisations, of the Commission's Draft Motor Vehicle Block Exemption Regulation and the Draft Supplementary Guidelines; asks the Commission to ensure future-proof rules as of 1 June 2010;
57. Welcomes, in this respect, the Commission's proposal for a more stringent regulatory framework for after-sales services, to reduce the high level of consumer expenditure on repair and maintenance caused by distortive practices such as the exclusion of independent service providers.
58. Expects due account to be taken of the interests of small and medium-sized motor vehicle dealers in the forthcoming competition law regime on the motor vehicle sector; failing that, considers that the Motor Vehicle Block Exemption Regulation should be retained in its present form;
59. Asks to be consulted on any proposed amendment of the Block Exemption Regulation applicable to Vertical Agreements, within a timeframe which allows Parliament to undertake adequate scrutiny and to make a thorough contribution;

Merger control

60. Welcomes the aim for further improvement of the referral mechanisms and greater consistency in the evaluation of comparable merger operations, and encourages the Commission to review the effects of the two-thirds rule further;
61. Welcomes the revision of the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, which codifies recent judgments of the Court of Justice, takes into account the conclusions drawn from the Remedies Study, and addresses the points raised during the public consultation;
62. Requests the Commission to draw up a country-by-country report on the application of Article 21(4) of the EC Merger Regulation, which allows for public policy considerations to take precedence over competition considerations;
63. Emphasises that the current economic crisis does not justify a relaxation of EU merger control policies;

Sector inquiries

64. Invites the Commission to set out the criteria applicable for launching a sector inquiry; takes the view that the Commission should act not only on complaints from industry or consumers, but also on the recommendation of Parliament;
65. Calls on the Commission to investigate the margin share in the production and distribution chains in line with Parliament's resolution of 26 March 2009 on food prices in Europe; requests the Commission to propose appropriate measures, including regulation, to protect consumers, workers and producers from any abuse of dominant position or negative impacts

identified in the course of that investigation;

66. Reiterates in this context its earlier calls for sector inquiries into online advertising and relations between the producers of agricultural goods (in particular dairy produce), intermediate purchasers, major distributors and end consumers; calls for an inquiry into media concentrations, including all channels for distribution of content, such as print, television and radio and the internet; requests that the Commission present an analysis of competition in the telecoms, car and financial services sectors;
67. Stresses the need for comprehensive sector inquiries and follow-up measures in close cooperation with the authorities of the European Competition Network (ECN) into the food industry and, in particular, into the distribution chain for dairy products;
68. Requests the Commission to continue to monitor the prices of food products in the European Union and the conditions of competition in the food industry;
69. Highlights the need to improve competition in the pharmaceutical sector by taking the appropriate measures to fight those practices of the pharmaceutical enterprises that may result in delaying or blocking the entry of generic products on the market, in accordance with the results of the sector enquiry conducted by DG Competition;
70. Welcomes the Commission's enquiry into the energy sector; requests the Commission to investigate the extent to which a lack of investment in infrastructure, particularly gas and electricity interconnections, is hampering competition; notices that security of supply and effective competition in the energy market cannot be achieved without an interconnected and well-functioning energy infrastructure;
71. Is concerned about insufficient competition in telecoms; requests a further sector enquiry; insists that the Body of European Regulators for Electronic Communications (BEREC) foster competition, in particular through pertinent market analysis; insists therefore that its secretariat be given sufficient resources for this purpose;
72. Deplores the fact that the Commission, in its report, addresses inter-institutional cooperation with Parliament only briefly and does not respond to the following requests made by Parliament in its resolution of 10 March 2009:
 - to review the operation of abusive practices in the services sector, which may prevent small businesses from being able to tender for work;
 - to ensure proper vigilance over competitive behaviour in the Union's fuel markets;
 - to take measures supporting pricing competition rather than regulating retail prices in the telecoms sector;
73. Reiterates its call for an inquiry into the application of public procurement rules, and whether national differences lead to a distortion of competition;

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74. Instructs its President to forward this resolution to the Council and the Commission.

