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DRAFT REPORT

on the Report on Competition Policy 2009
(2010/2137(INI))

Committee on Economic and Monetary Affairs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the Report on Competition Policy 2009 (2010/2137(INI))

The European Parliament,

- having regard to the Commission Report on Competition Policy 2009 (COM(2010)0282) and the Commission Staff Working Document accompanying the Commission Report on Competition Policy 2009 (SEC(2010)0666),
- 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 Treaty¹,
- having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (EC Merger Regulation)²,
- having regard to the Commission Communication of 13 October 2008 on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis³ (the Banking Communication),
- having regard to the Commission Communication of 5 December 2008 on the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition⁴ (the Recapitalisation Communication),
- having regard to the Commission Communication of 25 February 2009 on the treatment of impaired assets in the Community banking sector⁵ (the Impaired Assets Communication),
- having regard to the 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 rules⁶ (the Restructuring Communication), these four last Communications hereinafter mentioned together as ‘the four Communications for the financial sector’,
- 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 crisis⁷ (the Temporary Framework),
- 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

¹ OJ L 1, 4.1.2003, p. 1.

² OJ L 24, 29.1.2004, p. 1.

³ OJ C 270, 25.10.2008, p. 8.

⁴ OJ C 10, 15.1.2009, p. 2.

⁵ OJ C 72, 26.3.2009, p. 1.

⁶ OJ C 195, 19.8.2009, p. 9.

⁷ OJ C 16, 22.1.2009, p. 1.

abusive exclusionary conduct by dominant undertakings'¹,

- having regard to the Commission Notice on a Best Practices Code on the conduct of State aid control proceedings², the Commission Notice on a simplified procedure for the treatment of certain types of State aid³ and the Commission Notice on the enforcement of State aid law by national courts⁴ (Simplification Package),
 - having regard to the Commission Guidelines on State aid for environmental protection⁵,
 - having regard to the State Aid Scoreboards for Spring 2009 (COM(2009)0164), Autumn 2009 (COM(2009)661) and Spring 2010 (COM(2010)0255),
 - having regard to its resolutions of 10 March 2009 on the Reports on Competition Policy 2006 and 2007⁶ and of 2 February 2010 on the Report on Competition Policy 2008⁷,
 - having regard to its resolution of 26 March 2009 on food prices in Europe⁸,
 - 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 Union⁹,
 - having regard to Rules 48 of its Rules of Procedures,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A7-0000/2010),
- A. whereas the exceptional circumstances of the last two years' financial and economic crisis have called for exceptional measures,
- B. whereas in times of crisis, well-functioning markets are essential and competition rules should be applied flexibly but strictly,
- C. whereas protectionism and non-enforcement of competition rules would only deepen and prolong the crisis,
- D. whereas competition policy is an essential tool in enabling the EU to be competitive on the global stage,
- E. whereas the growing budget deficits and increased levels of public debt in many Member States may slow down economic recovery and economic growth for years to come,
- F. whereas Member States' governments, as a response to the financial crisis, have granted a

¹ OJ C 45, 24.2.2009, p. 7.

² OJ C 136, 16.6.2009, p. 13.

³ OJ C 136, 16.6.2009, p. 3.

⁴ OJ C 85, 9.4.2009, p. 1.

⁵ OJ C 82, 1.4.2008, p. 1.

⁶ Texts adopted, P6_TA(2009)0099.

⁷ Texts adopted, P7_TA(2010)0050.

⁸ Texts adopted, P6_TA(2009)0191.

⁹ OJ C 184 E, 6.8.2009, p. 23.

sizable amount of State aid in the form, for example, of guarantee schemes, recapitalisation schemes and complementary forms of liquidity support on bank funding; whereas these measures have provided banks with a significant source of funding and insurance against the risks usually faced by the financial sector,

- G. whereas empirical analyses suggest that this State aid has 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 the aid or prolonging the exceptional rules currently in force,
- H. whereas tax governance is an important factor in maintaining favourable conditions for competition and in enhancing the functioning of the internal market,

General remarks

- 1. Welcomes the Report on Competition Policy 2009;
- 2. Is pleased to note that the Commission was quick to react to the crisis; congratulates the Commission on its effective use of competition policy measures in exceptional circumstances;
- 3. Continues to support a more active role for Parliament in the shaping of competition policy through the introduction of a co-legislative role;
- 4. Calls once again on the Commission, as the sole EU-wide competent competition authority, to report to Parliament in detail and annually about the follow-up to Parliament's recommendations and to explain any departure from Parliament's recommendations;
- 5. Stresses the need to draft clear and SME-friendly competition rules;
- 6. Calls on the Commission to make use of independent, reliable expertise for the evaluations and studies it undertakes or orders;
- 7. Asks the Commission to make use of Article 12 of the Treaty on the Functioning of the European Union, which states 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;
- 8. Underlines that it has supported the Commission's request for more resources to be allocated to Commission staff in the area of competition in the 2011 budget; asks to be informed about how the additional resources have been used; recalls its request to the Commission to ensure that its Directorate-General for Competition has appropriate staff numbers to deal with its rising workload;

Focus Chapter: Competition Policy and the Financial and Economic Crisis

- 9. Welcomes the temporary State aid rules established in response to the financial and economic crisis, namely the four Communications for the financial sector and the Temporary Framework directed at the other sectors;

10. Is concerned that these measures, which are temporary in nature, might ultimately not be that temporary; urges the Commission to provide clarity on the phasing out criteria that will be used to decide on their possible extension;
11. Urges the Commission to clarify the binding restructuring measures related to potential distortive effects resulting in differences in repayment conditions between Member States;

State aid control

12. 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 single market;
13. 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;
14. Considers it essential, 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;
15. Calls for the establishment of clear criteria for divestments, taking into account the medium-term impact of divestments on the firms involved, namely the reduction of their role in the global market;
16. Urges the Commission to carefully inspect fiscal State aid regimes in force in certain Member States to check their non-discriminatory and transparent nature;
17. Notes with concern that the recovery of illegal State aid remains a lengthy and cumbersome process; encourages the Commission to tighten up procedures further and to keep up the pressure on Member States, in particular on repeat offenders;

Antitrust

18. Welcomes the firm stance the Commission has taken on anti-competitive behaviour in recent years;
19. Recalls that cartels represent some of the most serious violations of competition law; believes that such infringements of competition law run counter to the interests of EU citizens since they do not allow consumers to benefit from lower prices;
20. Reiterates its call on the Commission to improve coordination between the competition law approach and the consumer law approach in its initiatives;
21. Urges the Commission to take a closer look at trickle-down economics when analysing possible abuses of dominant positions, when it discovers that the dominant position has not been abused;
22. Believes that the use of ever higher fines as the sole antitrust instrument may be too blunt, not least considering potential job losses as a result of the inability to pay; notes that

substantial revenues deriving from fines are currently collected by the Commission and enter the EU budget; emphasises that a policy of high fines should not be used as an alternative budget financing mechanism;

Merger control

- 23. Emphasises that the current economic crisis does not justify a relaxation of EU merger control policies;
- 24. Underlines that the application of competition rules to mergers must be evaluated from the perspective of the entire internal market;

Sector developments

- 25. Regrets that energy consumers in the EU continue to suffer from a distorted energy market;
- 26. Invites the Commission to report on, and speed up progress on its investigations into, the application of State aid rules to the postal sector;
- 27. Urges the Commission to look in greater detail at competition in the agro-industrial sector in terms of transparency and consumer price evolution;

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