



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Economic and Monetary Affairs

2011/2094(INI)

31.8.2011

DRAFT REPORT

on the Annual Report on EU Competition Policy
(2011/2094(INI))

Committee on Economic and Monetary Affairs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the Annual Report on EU Competition Policy (2011/2094(INI))

The European Parliament,

- having regard to the Commission Report on Competition Policy 2010 (COM(2011)0328) and the accompanying Commission staff working paper (SEC(2011)0690),
- 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 (the EC Merger Regulation)²,
- having regard to the Commission communication of 13 October 2008 entitled ‘The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis’³ (the Banking Communication),
- 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’⁴ (the Recapitalisation Communication),
- having regard to the Commission communication of 25 February 2009 entitled ‘The treatment of impaired assets in the Community banking sector’⁵ (the Impaired Assets Communication),
- having regard to the Commission communication of 23 July 2009 entitled ‘The return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules’⁶ (the Restructuring Communication),
- having regard to the Commission communication of 17 December 2008 entitled ‘Temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis’⁷ (the original temporary framework),
- having regard to the Commission communication of 1 December 2010 entitled ‘Temporary Union framework for State aid measures to support access to finance in the current financial and economic crisis’⁸ (the new temporary framework, replacing the one which ended on 31 December 2010),

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.

⁸ OJ C 6, 11.1.2011, p.5.

- having regard to the June 2011 study entitled ‘State aid – Crisis rules for the financial sector and the real economy’, commissioned by Parliament⁹,
- having regard to the draft Commission regulation amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty as regards the simplification of Member States’ reporting obligations,
- having regard to the Commission staff working document entitled ‘Public Consultation: Towards a Coherent European Approach to Collective Redress’ (SEC(2011)0173),
- having regard to the DG Competition document entitled ‘Best Practices on the conduct of proceedings concerning Articles 101 and 102 TFEU’¹⁰,
- having regard to the DG Competition document entitled ‘Guidance on procedures of the Hearing Officers in proceedings relating to Articles 101 and 102 TFEU’¹¹,
- having regard to the DG Competition document entitled ‘Best practices for the submission of economic evidence and data collection in cases concerning the application of Articles 101 and 102 TFEU and in merger cases’¹²,
- having regard to the Framework Agreement of 20 November 2010 on relations between the European Parliament and the European Commission¹³ (referred to hereinafter as ‘the Framework Agreement’), in particular paragraphs 12¹⁴ and 16¹⁵ thereof,
- having regard to its resolutions of 22 February 2005 on the Commission’s XXXIIIrd Report on Competition Policy 2003¹⁶, of 4 April 2006 on the Commission Report on Competition Policy 2004¹⁷, of 19 June 2007 on the Report on Competition Policy 2005¹⁸, of 10 March 2009 on the Reports on Competition Policy 2006 and 2007¹⁹, of 9 March 2010 on the Report on Competition Policy 2008²⁰ and of 20 January 2011 on the Report on Competition Policy 2009²¹,
- having regard to Rule 48 of its Rules of Procedure,
- having regard to the report of the Committee on Economic and Monetary Affairs

⁹ <http://www.europarl.europa.eu/activities/committees/studies/download.do?language=en&file=42288>.

¹⁰ http://ec.europa.eu/competition/consultations/2010_best_practices/best_practice_articles.pdf.

¹¹ http://ec.europa.eu/competition/consultations/2010_best_practices/hearing_officers.pdf.

¹² http://ec.europa.eu/competition/consultations/2010_best_practices/best_practice_submissions.pdf

¹³ OJ L 304, 20.11.2010, p. 47.

¹⁴ ‘Each Member of the Commission shall make sure that there is a regular and direct flow of information between the Member of the Commission and the chair of the relevant parliamentary committee.’

¹⁵ ‘Within 3 months after the adoption of a parliamentary resolution, the Commission shall provide information to Parliament in writing on action taken in response to specific requests addressed to it in Parliament’s resolutions, including in cases where it has not been able to follow Parliament’s views. [...]’

¹⁶ Texts adopted, P6_TA(2005)0032.

¹⁷ Texts adopted, P6_TA(2006)0120.

¹⁸ Texts adopted, P6_TA(2007)0263.

¹⁹ Texts adopted, P6_TA(2009)0099.

²⁰ Texts adopted, P7_TA(2010)0050.

²¹ Texts adopted, P7_TA(2011)0023.

(A7-0000/2011),

- A. whereas the financial and economic crisis which broke out in autumn 2008 has not yet been overcome,
- B. whereas the Commission responded to the eruption of the crisis in a prompt and reasonable manner by adopting special State aid rules and using competition policy as a crisis management tool; whereas this was, and still is, meant to be a temporary regime;
- C. whereas the State aid given during the crisis has contributed to an imbalance in public finances; whereas it is still unknown how far-reaching an impact this State aid and the guarantees provided to banks may have in the future if some of those guarantees are actually called in;
- D. whereas, notwithstanding all the efforts to cope with the economic crisis, cartels remain the most serious threat to competition, consumer welfare and the proper functioning of markets, and consequently cannot be accepted even during an economic crisis;

Commission Report on Competition Policy 2010

- 1. Welcomes the Commission Report on Competition Policy 2010; highlights, on the occasion of the 40th anniversary of this report, that competition policy has brought numerous benefits in terms of consumer welfare and continues to be an essential tool for preserving the single market; stresses that the rules need to be updated to deal with new challenges;

Competition policy recommendations

Control of State aid

- 2. Stresses that the temporary regime applicable to State aid has been positive as an initial reaction to the crisis, but that it cannot be prolonged unduly, and that a new, permanent regulatory system and new State aid rules are necessary in order to tackle the flaws found in the pre-crisis legal system, in particular as regards the financial sector;
- 3. Welcomes the announcement of specific rescue and restructuring guidelines for the banking sector; recommends to the Commission that it take into account the impact of the liquidity support provided by central banks during the rescue stage, and provide for the orderly restructuring of banks, with shareholder involvement, prior to the injection of public capital;

Antitrust

- 4. Believes that the most effective tool for deterrence is still public enforcement by the Commission and by national competition authorities;
- 5. Stresses that private enforcement already exists in most of the Member States; takes note of the Commission's ideas concerning EU-wide collective redress; calls on the Commission to take careful note of all the potential risks that have been observed in other jurisdictions, including the USA;

6. Calls on the Commission to incorporate the basis for calculating fines, along with new fining principles, into Regulation (EC) No 1/2003;
7. Welcomes the use of the settlement procedure in cartel cases with a view to making the process more efficient; is concerned about the increased number of requests for fine reduction on account of an inability to pay, particularly from ‘mono-product’ undertakings and SMEs;
8. Believes that, as regards decisions on fines, the existence of robust compliance programmes should not have negative implications for the infringer;
9. Encourages the Commission to review its fining guidelines and to regulate – with due regard for the principle of subsidiarity – the interaction between public and private liabilities under EU antitrust law; encourages the Commission to make sure fines take into account any compensation already paid to third parties; urges the Commission to initiate a review on ways to encourage the infringer to pay damages on an out-of-court settlement basis before the final decision on the fine is taken;
10. Calls on the Commission to ensure that the leniency programme remains attractive by granting leniency recipients a reduction of their fines in the event of follow-on actions for damages;
11. Stresses that, as regards recidivism, a clear connection should be established between, on one hand, the infringement under investigation and past infringements and, on the other, the undertaking concerned; emphasises that, most importantly, a maximum time-limit should be introduced;

Merger control

12. Believes that the economic and financial crisis cannot justify a more benevolent assessment of merger cases; calls on the Commission to ensure that mergers designed to rescue or restructure ailing banks do not create more ‘too big to fail’ institutions;

International cooperation

13. Highlights the importance of fostering the global convergence of competition regulation; encourages the Commission to participate actively in the International Competition Network;
14. Encourages the Commission to conclude bilateral cooperation agreements on competition enforcement; welcomes the announcement of the negotiation of such an agreement with Switzerland, and encourages greater coordination of policy and enforcement actions;

Specific sectors

15. Welcomes the Commission’s Energy 2020 initiative; urges the Commission to pursue the full implementation of the internal energy market package; encourages the Commission, insofar as an open and competitive single market in energy has not yet been fully achieved, actively to monitor competition in energy markets;

Competition dialogue between Parliament and the Commission

Interinstitutional Agreement on Competition Dialogue

16. Welcomes the attendance of Commission Vice-President Joaquín Almunia at exchanges of views with Parliament, along with the positive cooperation demonstrated this year through the briefings organised by DG COMP; takes the view that an annual meeting between MEPs and the Director-General of DG COMP is a good practice which should be continued;
17. Calls, on the occasion of the 40th anniversary of the Commission's Report on Competition Policy, for the conclusion of an agreement between Parliament and the Commission setting up a comprehensive dialogue on competition policy;

Annual Competition Report

18. Urges the Commission to include in its Annual Report:
 - a description of the legislative and non-legislative, binding and non-binding, instruments adopted during the year in question, together with a justification for the changes made;
 - a summary of the contributions received from Parliament and from stakeholders in the context of public consultations, together with a justification as to why it has accepted some of the views expressed and not others;
 - a description of the measures taken by the Commission during the year in question to enhance the transparency of its decision-making and ensure greater regard for due process; this section should include a report on Competition Dialogue with Parliament;

Annual Competition Work Programme

19. Urges the Commission to present the Competition Work Programme at the beginning of each year, including a detailed list of the binding and non-binding competition instruments expected to be adopted during the coming year and of the public consultations envisaged;
20. Stresses that both the Report and the Work Programme should be presented before the ECON Committee by the Commissioner for Competition;

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